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Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 64/254. On 27 May 2010, the Secretary-General sent notes verbales to the Permanent Mission of Israel to the United Nations, the Permanent Observer Mission of Palestine to the United Nations and the Permanent Mission of Switzerland to the United Nations, drawing their attention to the relevant provisions of resolution 64/254 and requesting written information by 12 July 2010 concerning any steps taken or in the process of being taken in relation to their implementation. The full text of the materials received by the Secretariat in reply to those requests is attached as annexes. The report also contains the observations of the Secretary-General.

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I. Introduction

1. The present report is submitted in pursuance of paragraph 5 of General Assembly resolution 64/254 of 26 February 2010, entitled "Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict", in which the Assembly requested the Secretary-General to report to it, within a period of five months, on the implementation of the resolution. To fulfil that request, it was therefore necessary to ascertain what steps the parties named in paragraphs 2, 3 and 4 of the resolution had taken.

2. On 27 May 2010, the Secretary-General drew the attention of the Permanent Mission of Israel to the United Nations to resolution 64/254, with the request that the Permanent Mission provide the Secretariat with written information by 12 July 2010 on any steps that the Government of Israel might have taken or was in the process of taking further to the call of the General Assembly in paragraph 2 of the resolution.

3. On 16 July 2010, the Secretariat received a document from the State of Israel entitled "Gaza operation investigations: second update". The full text of the document is attached as annex I to the present report.

4. On 27 May 2010, the Secretary-General drew the attention of the Permanent Observer Mission of Palestine to the United Nations to resolution 64/254, with the request that the Permanent Observer Mission provide the Secretariat with written information by 12 July 2010 on any steps that the Palestinian side might have taken or was in the process of taking further to the exhortation of the General Assembly in paragraph 3 of the resolution.

5. On 12 July 2010, the Secretary-General received a letter of the same date from the Permanent Observer Mission of Palestine to the United Nations transmitting a letter dated 11 July 2010 from President Mahmoud Abbas of the Palestinian Authority and the report of the Palestinian Independent Commission Investigating in Follow-up of the Goldstone Report, including a general introduction to the report. The full text of the letters, the general introduction to the report of the Palestinian Independent Commission Investigating in Follow-up of the Goldstone Report and the report itself is attached as annex II to the present report.

6. On 27 May 2010, the Secretary-General drew the attention of the Permanent Mission of Switzerland to the United Nations to resolution 64/254, with the request that the Permanent Mission provide the Secretariat with written information by 12 July 2010 on any steps that the Government of Switzerland might have taken or was in the process of taking further to the recommendation of the General Assembly in paragraph 4 of the resolution.

7. On 12 July 2010, the Secretary-General received a note verbale of the same date from the Permanent Mission of Switzerland transmitting a report entitled "Status of the talks on follow-up to paragraph 4 of General Assembly resolution 64/254". The full text of the letter and the report is attached as annex III to the present report.

8. The present report follows the report of the Secretary-General of 26 July 2010 to the General Assembly (A/64/867) submitted pursuant to paragraph 5 of resolution 64/254, in which it was reported that the submissions received from the parties totalled approximately 382 pages. In that report, the Secretary-General indicated that, for technical reasons, he was unable to issue the documents or his observations at that time and that he would report further as soon as the technical process of translation was completed.

II. Observations

9. At the beginning of 2009, I visited both Gaza and southern Israel in order to help end the fighting and to show my respect and my concern at the death and injury of so many people during the conflict in and around Gaza. In March 2010, I again visited Gaza and Israel. I was, and remain, deeply affected by the widespread death, destruction and suffering in the Gaza Strip, as well as moved by the plight of civilians in southern Israel who have been subject to indiscriminate rocket and mortar fire.

10. I reiterate that international human rights and humanitarian law need to be fully respected in all situations and circumstances. Accordingly, on several occasions, I have called upon all of the parties to carry out credible, independent domestic investigations into the conduct and consequences of the Gaza conflict. I hope that such steps will be taken wherever there are credible allegations of violations of international human rights and humanitarian law.

11. It is my sincere hope that General Assembly resolution 64/254 has served to encourage investigations by the Government of Israel and the Palestinian side that are independent, credible and in conformity with international standards.

12. I recall that on 25 March 2010 the Human Rights Council adopted resolution 13/9, in which it decided, in the context of the follow-up to the report of the Independent International Fact-Finding Mission, to establish a committee of independent experts in international humanitarian and human rights laws to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254, including the independence, effectiveness and genuineness of those investigations and their conformity with international standards. Also, in resolution 13/9, the Human Rights Council requested me to transmit all the information submitted by the Government of Israel and the Palestinian side pursuant to paragraphs 2 and 3 of General Assembly resolution 64/254 to the committee of independent experts. I am accordingly sending today a letter to the High Commissioner for Human Rights requesting her to transmit the documents received from the State of Israel and the Permanent Observer Mission of Palestine to the United Nations to the committee of independent experts.

Annex I

[Original: English]

Gaza operation investigation: second update

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I. INTRODUCTION AND SUMMARY

1. This Paper describes the progress and current status of investigations carried out by Israel into allegations of misconduct and violations of the Law of Armed Conflict[1] by Israel Defence Forces ("IDF") during the military Operation in Gaza from 27 December 2008 through 18 January 2009 (the "Gaza Operation," also known as "Operation Cast Lead"). It is intended as an update to the information presented in Israel's reports related to the Gaza Operation previously released in July 2009 and January 2010.

2. Israel's first report, from July 2009, entitled *The Operation in Gaza: Factual and Legal Aspects* (hereinafter "*Operation in Gaza Report*"),[2] described the events leading up to the Gaza Operation. These included Hamas's incessant mortar and rocket attacks from Gaza on Israel's civilians (some 12,000 such attacks in the eight years prior to the Operation) and the steadily increasing range and threat of such attacks; the abduction in 2006 of Israeli soldier Corporal Gilad Shalit, who remains in captivity incommunicado to this date; as well as Israel's numerous attempts to address the terrorist threat from Gaza through non-military means, including diplomatic overtures and urgent appeals to the United Nations.[3]

3. The *Operation in Gaza Report* also described the IDF's efforts to ensure compliance with the Law of Armed Conflict during the Gaza Operation, despite the significant operational challenges posed by the tactics of Hamas—in particular Hamas's intentional use of Palestinian civilians and civilian infrastructure as a cover for launching attacks, shielding combatants, and hiding weapons.

4. The *Operation in Gaza Report* also set out in detail the legal framework governing the use of force and the rules—including the principles of distinction and proportionality—that apply to an armed conflict under international law[4]. The report also detailed the Israeli system for investigating allegations of violations of the Laws of Armed Conflict, and included preliminary findings (as of July 2009) of a number of the investigations already established following the Gaza Operation.

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[1] As in the two previous reports, the term "Law of Armed Conflict" is used throughout this Paper in its ordinary sense—describing the legal obligations of parties to an armed conflict in the course of their military operations. International Humanitarian Law is used by many commentators and countries as an interchangeable term. Israel, like many other countries, prefers the term Law of Armed Conflict.

[2] *The Operation in Gaza Report: Factual and Legal Aspects* (July 2009), *available at* http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Operation_in_Gaza-Factual_and_Legal_Aspects.htm.

[3] *Id.* ¶¶ 36-81.

[4] *Id.* ¶¶ 27-35.

5. In January 2010 Israel released an update to the *Operation in Gaza Report* (the "*January 2010 Update*").[5] That update provided detailed information on Israel's various mechanisms for reviewing allegations of violations of the Law of Armed Conflict; it also compared the Israeli investigative systems for military activities with the analogous systems of other democracies (the United Kingdom, the United States, Canada, and Australia)[6] and explained how Israel was addressing specific complaints alleging violations of the Law of Armed Conflict during the Gaza Operation.

6. The *January 2010 Update* described in detail the multiple layers of review in Israel's investigative system that ensure thoroughness, impartiality, and independence. At the heart of the military justice system is the Military Advocate General ("MAG"), who is legally independent from the military chain of command. When allegations of violations of the Law of Armed Conflict are identified by or brought to the attention of the MAG, in situations that suggest *per se* criminal behavior, the MAG will refer a case immediately for criminal investigation. In other cases, the MAG may first review the findings of a command investigation or in its absence request that one be conducted. The MAG will examine the information gathered in the command investigation, together with the complaint received and all additional publicly available materials, before determining whether to refer the case to criminal investigation.

7. Israel's Attorney General provides for civilian oversight, as decisions of the MAG on whether or not to investigate or indict may be subject to his review. As noted in the *January 2010 Update*, judicial review is available through Israel's Supreme Court sitting as the High Court of Justice exercising oversight over any decision of the MAG and the civilian Attorney General. Such Supreme Court review can be initiated by a petition of any interested party, including Palestinians who live in Gaza and non-governmental organizations ("NGOs").[7]

8. The *January 2010 Update* reviewed progress made in the investigations as of January 2010, including updates on five special command investigations detailed in the *Operation in Gaza Report*.[8] The *January 2010 Update* also noted that a sixth special command investigation was initiated in November 2009 to review three specific allegations in the *Report of the U.N. Human Rights Council Fact-Finding Mission on the Gaza Conflict, chaired by Justice Richard Goldstone*

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[5] *Gaza Operation Investigations: An Update* (January 2010), *available at* http://www.mfa.gov.il/NR/rdonlyres/8E841A98-1755-413D-A1D2-8B30F64022BE/0/GazaOperationInvestigationsUpdate.pdf.

[6] *January 2010 Update* ¶¶ 71-88.

[7] See, for example, *January 2010 Update*, ¶ 36.

[8] *January 2010 Update* ¶¶ 96-123.

(hereinafter "*HRCFF Report*").[9] Israel opened numerous other criminal and command investigations to investigate and assess allegations regarding the Gaza Operation.[10]

9. The current Paper provides information regarding the additional steps Israel has taken, and is taking, to conduct investigations into allegations relating to the Gaza Operation. This Paper will not repeat the extensive information previously provided in the two prior reports nor will it attempt to cover all of the investigations that Israel has opened in this regard. Instead, this report provides an overview of the progress of the major investigations over the last six months, including information on investigations relating to specific incidents discussed in the *HRCFF Report*. In addition, this Paper includes a summary of some of the changes in military operational procedures that Israel has made, or is making, to implement the lessons learned as a result of the Gaza Operation.

10. Israel's numerous investigations have produced significant results, particularly during the last several months. Since the *January 2010 Update*, Israel's Military Police Criminal Investigative Division ("MPCID") has opened 11 additional criminal investigations, resulting in a total of 47 criminal investigations initiated so far into specific incidents relating to the Gaza Operation. Some of the investigations have resulted in criminal indictments and trials: two IDF soldiers were recently indicted for compelling a Palestinian minor to assist them in a manner that put the minor at risk; the MAG has also filed criminal charges in the case of an IDF soldier who is suspected of killing a Palestinian civilian who was walking with a group of civilians towards an IDF position. These cases are in addition to an earlier indictment and conviction of an IDF soldier for the crime of looting, as reported in the *January 2010 Update*.[11]

11. Several other investigations have resulted in military disciplinary actions. An IDF Brigadier General and a Colonel have been disciplined for approving the use of explosive shells in violation of the safety distances required in urban areas. An IDF Lieutenant Colonel was disciplined for permitting a Palestinian civilian to enter a structure where terrorist operatives were present. In addition, an IDF officer was severely reprimanded and two other officers were sanctioned for failing to exercise appropriate judgment during an incident that resulted in civilian casualties in the Al-Maqadmah mosque.

12. At the same time, the MAG has concluded his review of a number of other MPCID criminal and command investigations without initiating criminal charges or disciplinary measures, after concluding that the investigations did not establish any

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[9] *Human Rights Council Fact-Finding Report* (25 September 2009), *available at* http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf.

[10] *January 2010 Update* ¶¶124-27.

[11] *Id.* ¶ 137 & n. 112.

violations of the Law of Armed Conflict or IDF procedures. A number of other allegations of military wrongdoing are still under investigation.

13. The IDF has also implemented operational changes in its orders and combat doctrine designed to further minimize civilian casualties and damage to civilian property in the future. In particular, the IDF has adopted important new procedures designed to enhance the protection of civilians in urban warfare, for instance by further emphasizing that the protection of civilians is an integral part of an IDF commander's mission. While the majority of the issues addressed in the new procedures were already embedded in various operational orders and guidelines in existence prior to the Operation, the new procedures demand even more comprehensive protections, such as the integration of a Humanitarian Affairs Officer in each combat unit beginning at the battalion level and above. In addition, the IDF has adopted an order defining new procedures to regulate the destruction of private property in cases of military necessity.

14. Israel has made extensive efforts to conduct thorough and independent investigations of allegations of misconduct by the IDF during the Gaza Operation. In this regard, Israel has developed mechanisms to overcome some of the challenges inherent in conducting investigations into operational activity in the context of an armed conflict, including the challenges of locating witnesses in Gaza and addressing general and often second-hand allegations of wrongdoing.

15. While the State of Israel is confident in the thoroughness, impartiality, and independence of its investigatory system of alleged violations of the Law of Armed Conflict, in light of criticism raised in certain reports regarding these mechanisms, the Government of Israel has recently mandated an independent public commission to examine the conformity of Israel's mechanisms for investigating complaints raised in relation to violations of the Law of Armed Conflict with its obligations under international law. The Commission, headed by retired Justice of the Supreme Court Yaakov Turkel, is composed of three distinguished independent experts and two renowned international observers ("Turkel Commission").

16. This paper is structured as follows: Section II outlines the progress of investigations since the *January 2010 Update*. Section III describes the results and status of several specific investigations, including investigations into incidents mentioned in the *HRCFF Report*. Section IV describes changes in military operational guidelines, based on Israel's assessment of the Gaza Operation. Finally, Section V describes the establishment of the Turkel Commission and its mandate.

II. PROGRESS OF INVESTIGATIONS SINCE JANUARY 2010

17. Over the past six months, Israel's military justice system has continued to make progress in its investigations of allegations of wrongdoing by IDF forces during the Gaza Operation. As reported in January 2010, Israel has launched over 150 military investigations, including both MPCID criminal investigations and command investigations. This Paper highlights the results of some of the investigations that have been completed and the decisions that have been made by the MAG. As previously explained, decisions of the MAG may be subject to review by the Attorney General and by Israel's Supreme Court.

18. The facts described in this Paper demonstrate that the scope of Israel's investigations into the Gaza Operation has gone well beyond focusing on individual soldiers. In addition to the criminal indictments of IDF soldiers, the MAG has not hesitated to pursue discipline of senior military officers, including a Brigadier General and a Colonel in one case, and a Lieutenant Colonel in another. In a third case, one officer was subject to disciplinary measures and two others to command sanctions, as described in more detail in Section III below. Furthermore, the IDF's six special command investigations, discussed in Israel's two previous reports, have focused on broader operational issues such as the use of weapons containing white phosphorous, the precautions taken in the vicinity of sensitive sites, and the destruction of private property. Some of these investigations have already led to substantial changes in IDF procedures, and other changes are in the process of being implemented.

A. Military Advocate General Review of Command Investigations

19. As described in the *January 2010 Update*, command investigations are important fact-finding inquiries intended not merely to examine the performance of IDF forces during military operations but also to identify and correct specific problems that may have occurred. Command investigations do not serve as a substitute for criminal investigations. Rather, command investigations compile an initial factual record, which is reviewed by the MAG together with the complaint and other relevant information before determining whether a criminal investigation is warranted. Command investigations may also recommend remedial measures, such as disciplinary actions or changes in operational procedures.

20. The MAG review of a command investigation is a rigorous procedure. During this review, the MAG considers the results of the command investigation together with the complaint received and all additional information provided by the complainant or publicly available, including reports published by human rights organizations and any additional sources of information at its disposal. The MAG also frequently asks follow-up questions of the investigators and may require them to

perform additional fact-finding before making a decision on what course of action to take with respect to a particular complaint.

21. Even with regard to closed investigations, the MAG may reopen the review of an incident if new facts or circumstances subsequently come to light. This occurred, for instance, in the investigation of events around the el-Bader flour mill described in the *January 2010 Update*[12] (and discussed in Section III below), as well as in the investigation related to the al-Maqadmah mosque (also described in Section III).

22. Since January 2010, the Military Advocate General has completed his factual and legal review of numerous command investigations, referring some of them for criminal investigations, identifying others for disciplinary proceedings,[13] and closing others when the investigation did not establish that IDF forces violated the Law of Armed Conflict or IDF procedures.

B. MPCID Criminal Investigations

23. Since the *January 2010 Update*, Israel has launched 11 new MPCID criminal investigations into IDF conduct during the Gaza Operation, bringing the total number of criminal investigations to 47. The latest criminal investigation ordered by the MAG relates to allegations described in several reports, including the *HRCFF Report*, pertaining to the Al-Samouni family.[14]

24. As explained in the *January 2010 Update*, command investigations are not a pre-requisite for the initiation of a criminal investigation and therefore do not delay investigations in cases in which a *prima facie* basis for criminal behavior is clearly apparent. In fact, of the 47 criminal investigations initiated to date relating to the Gaza operation, 34—three quarters of the total—were directly referred to criminal investigations.

25. A number of criminal investigations have been concluded and their results reviewed by the MAG. In several of these cases, the MAG has referred the matter for disciplinary proceedings or ordered the issuance of a criminal indictment, as detailed in Section III below.

26. Since the conclusion of the Gaza Operation, the MPCID has focused its resources on the investigation of incidents arising out of the Operation. As previously reported, due to the volume and breadth of the investigations, a team of sixteen

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[12] *Id.* ¶¶ 165-74.

[13] As noted in the *January 2010 Update*, ¶ 55, disciplinary proceedings are reserved for less serious offenses. However, they can result in prison sentences of up to three years.

[14] *HRCFF Report* ¶¶ 706-44. As stated in the *January 2010 Update*, ¶¶ 124-25, a special command investigation was established to review this incident. Upon review of the findings of the special command investigation, the MAG decided that a criminal investigation was warranted. This investigation will proceed concurrently with two criminal investigations which are underway regarding other aspects of the incident.

investigators was dedicated exclusively to the Gaza Operation investigations. The investigators have at their disposal four Arabic-speaking translators. During a period when a particularly large volume of translations was required, the MPCID temporarily employed seven additional translators.

27. MPCID investigators traveled to various locations in order to meet with relevant witnesses, including Palestinians and IDF soldiers and officers involved in the Gaza Operation. In order to contact and coordinate meetings with Palestinian complainants in Gaza, MPCID investigators sought the assistance of human rights organizations and Israeli lawyers representing some of the complainants, which facilitated meetings between residents of Gaza and MPCID investigators (some in a facility at the Erez Crossing, one of the crossing points between Israel and the Gaza Strip). When the complainants named other potentially relevant witnesses in the course of an interview, investigators sought to interview those individuals as well.

28. In addition to collecting witness testimony, criminal investigators sought and obtained a variety of physical evidence, including IDF maps and operational logs relevant to the investigations. Investigators also gathered medical records from Gaza hospitals to assess injuries reported by Palestinian complainants. In some cases, MPCID enlisted the assistance of independent experts in order to study evidence of blast marks and attempt to identify the types of munitions used.

29. As noted in the *January 2010 Update*, MPCID investigators faced a number of difficult challenges in ascertaining the facts of rapidly evolving conflict situations.[15] The first challenge was the identification of the IDF contingents operating in each area on the day in question. MPCID investigators met with representatives of the Southern Command and the Gaza Division and carefully mapped the movement of the forces in the course of the Operation. Investigators also took testimony from battalion commanders and company commanders. MPCID investigators then sought to match up particular allegations with the location of relevant forces.

30. Another challenge is that some Palestinian witnesses have refused to make any statement, even in writing, to IDF investigators. Other Palestinian witnesses have declined to provide testimony in person. While an affidavit can provide investigators with valuable information and serve as the starting point for an investigation, a written affidavit alone is generally inadmissible as evidence at trial. In the Israeli legal system, as in many others, proving a criminal case instead requires that witnesses be willing to appear in court to permit cross-examination on issues such as the witness's ability to observe the events, whether a witness has any bias, and whether there were other relevant facts not recounted in the written statement. Hence, in some cases, the unwillingness of a complainant to cooperate

[15] *Id.* ¶ 93.

in criminal investigations may deprive the investigators of the most significant evidence.

31. Despite these difficulties, the MPCID has now completed a significant number of the criminal investigations opened in relation to the Gaza Operation. The MAG, in turn, has reviewed and made a decision with regard to many of these investigations. It should also be noted that in the course of evaluating some of the more complex incidents of the Gaza Operation, the MAG has consulted with senior attorneys in the Office of the State Attorney, and, in particular, with the Deputy State Attorney for Special Affairs and the Deputy State Attorney for Criminal Matters.

32. This Paper gives further detail about a number of MAG decisions reviewing criminal and command investigations in Section III.

C. Civilian Review of the Military Justice System

33. As detailed in the *January 2010 Update*,[16] decisions of the MAG may be subject to civilian review by the Attorney General of the State of Israel, an independent figure of high authority. A complainant or NGO may trigger review of the Attorney General by sending a letter to the Attorney General requesting further review of the matter. The Israeli Supreme Court has ruled that the Attorney General can order the MAG to change his position concerning whether to file a criminal indictment.[17]

34. Decisions of both the MAG and the Attorney General may be subject to review by the Supreme Court, sitting as the High Court of Justice.[18] This would include a decision whether to open a criminal investigation, whether to file an indictment, and whether to take other disciplinary action. Palestinian residents, as well as NGOs, have filed successful petitions challenging the MAG's exercise of prosecutorial discretion in several instances, while in other cases the Supreme Court has affirmed the decisions of the MAG.[19]

[16] *Id.* ¶¶ 31-33.

[17] *Id.*

[18] *Id.* ¶¶ 34-40.

[19] Examples of such petitions are detailed in the *January 2010 Update*, ¶¶ 36-37.

III. REPORT ON RESULTS OF SPECIFIC INVESTIGATIONS RELATING TO THE GAZA OPERATION

35. As stated in the *January 2010 Update*, Israel has launched more than 150 investigations into allegations of misconduct or violations of the Law of Armed Conflict related to the Gaza Operation, including the allegations described in the *HRCFF Report*. The *January 2010 Update* contained a description of four investigations with regard to which the MAG had completed his review as of the date of publication of that report. The present update reports on the results of several more of the cases reviewed by the MAG.

A. Investigations Relating to Alleged Mistreatment of Palestinian Civilians and Detainees

36. The IDF operational orders emphasize the duty to protect the dignity of civilians in the course of an armed conflict and to provide detainees with humane treatment. Accordingly, the standing orders of the Gaza Operation explicitly prohibited the use of civilians as human shields, as well as the compulsion of civilians to take part in military operations, in accordance with the Law of Armed Conflict and a Supreme Court ruling on the matter.[20]

37. Israel takes seriously any and all reports of mistreatment of Palestinian civilians or detainees during the Gaza Operation. The MAG has directly referred for criminal investigation all allegations that civilians were used by IDF forces as human shields or compelled to take part in military operations or that detainees were mistreated while in IDF custody. As the cases described below illustrate, the facts uncovered by some of the investigations differ substantially from the allegations. Nonetheless, in one case described below, the MAG found sufficient evidence of wrongdoing to prosecute two soldiers, and, in another, the MAG referred the case for disciplinary proceedings against a senior IDF commander. Furthermore, as stated in the *January 2010 Update*, the principal issues concerning the conditions of detention of Palestinian detainees during the course of the Gaza Operation are the subject of an ongoing special command investigation, headed by a senior officer outside the chain of command during the events in question.[21]

38. The following are a number of examples of the results of the MAG's review of investigations relating to alleged mistreatment of Palestinian civilians and detainees.

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[20] *Adalah—The Legal Center for Arab Minority Rights in Israel v. GOC Central Command, IDF*, HCJ 3799/02 (6 October 2005).

[21] *See January 2010 Update*, ¶ 125 & note 110, for the detailed mandate of this special command investigation.

(1) M.R.

39. The complaint regarding this incident was included in a Report of the Special Representative of the U.N. Secretary General for Children and Armed Conflict and alleged the use of a Palestinian boy as a human shield by IDF forces operating on 15 January 2010 in the Tel Al-Hawa area of Gaza City.[22] A similar allegation was raised by an Israeli NGO. In light of the allegations, the MAG ordered the opening of a direct criminal investigation.

40. The MPCID sought to identify the complainant, whose identity was not referenced in the report of the Special Representative of the Secretary General for Children and Armed Conflict. The military police investigators contacted the Israeli NGO and requested its assistance in identifying the complainant and coordinating an interview with him. The boy was interviewed in the presence of his mother. The investigators also collected other evidence, including the testimonies of soldiers involved in the incident.

41. The investigation revealed that while conducting a search in a building in Tel Al-Hawa, two soldiers compelled a boy to open several bags and suitcases suspected of being rigged with explosives. Based on these findings, the MAG found substantial evidence that these soldiers had failed to comply with IDF orders prohibiting the use of civilians for military operations.

42. In March 2010 the MAG issued a criminal indictment against the two soldiers. The trial, which is open to the public,[23] is currently underway in a District Military Court in Israel. As of the date of this Report, the prosecution has presented its case, which included the testimony of the boy.

(2) Majdi Abd-Rabbo

43. A complaint by an Israeli NGO asserted that a Gaza resident named Majdi Abd-Rabbo was forced to assist an IDF unit in an attempt to obtain the peaceful surrender of several armed operatives hiding in a house adjacent to his own. The MAG referred the incident directly to an MPCID criminal investigation in June 2009.[24] With the assistance of the NGO, the MPCID met with the complainant and took his statement. In addition, testimony was taken from 15 soldiers and officers from the unit involved in the incident, as well as several soldiers and officers from other units operating in the area at the time specified in the complaint.

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[22] *Human Rights Situation in Palestine and Other Occupied Arab Territories*, A/HRC/10/22, at annex ¶ 10 (20 March 2009).

[23] *See January 2010 Update* ¶ 28.

[24] After the MPCID investigation was already underway, the allegations were also described in the *HRCFF Report*, ¶¶ 1033-63.

44. Following a thorough investigation, various aspects of Mr. Abd-Rabbo's testimony could not be substantiated. However, the evidence gathered in the course of the investigation did reveal that the commander of the force, a Lieutenant Colonel who was in radio contact with the IDF unit throughout the event, had repeatedly authorized the unit to allow Mr. Abd-Rabbo to enter the structure adjoining his house in order to communicate with armed men inside.

45. Although the investigation found that Mr. Abd-Rabbo had asked to enter the structure and to communicate with the men, apparently in an attempt to resolve the situation and avoid potential damage to his own house, the MAG concluded that the commander should not have allowed Mr. Abd-Rabbo to enter the structure at that time, putting him at risk, regardless of his apparent consent.

46. Therefore, the MAG referred the case for disciplinary proceedings against the commander for failing to adhere to IDF operational orders prohibiting any such use of civilians for military operations. In opting for disciplinary proceedings rather than a criminal indictment, the MAG considered a range of factors, including the commander's belief that by consenting to Mr. Abd-Rabbo's request, he was acting to minimize potential damage to Mr. Abd-Rabbo's property. An additional factor was that Mr. Abd-Rabbo was not injured as a result of the incident. The officer was subsequently disciplined.

(3) Abbas Ahmad Ibrahim Halawa and Mahmoud Abd Rabbo al-Ajrami

47. Abbas Ahmad Ibrahim Halawa and Mahmoud Abd Rabbo al-Ajrami both alleged in two separate complaints that on 5 January 2009 Israeli soldiers took them from their homes in the Al-Atatra neighborhood, mistreated them, and forced them to act as human shields.[25] Mr. al-Ajrami also alleged that he suffered physical injuries as a result of mistreatment by IDF forces and that his house was vandalized and looted. The MPCID opened two separate criminal investigations into the two cases that were later combined when it became apparent that they related to a single chain of events.

48. In the course of the investigation, MPCID interviewed Mr. Halawa, Mr. al-Ajrami, and Mrs. Manal al-Ajrami. Investigators later sought to interview Mr. Halawa a second time, but he refused to appear. He did, however, provide investigators with additional information by means of a written affidavit. The MPCID also collected testimonies of over 20 officers and soldiers, including commanders of the regiments and companies that operated in the area during the relevant timeframe. In addition to witness testimony, the MPCID examined a variety of documentary evidence, including medical documents presented by Mr. al-Ajrami from Shifa hospital in Gaza.

[25] The allegations were also described in the *HRCFF Report*, ¶¶ 1064-95.

49. The investigation found that an IDF unit operating in the Al-Atatra neighborhood and searching for weapons and terrorist operatives[26] encountered the families of Mr. Halawa and Mr. al-Ajrami, who chose to stay in their homes despite the early warnings issued by the IDF, calling for civilians to evacuate the neighborhood for their safety. The force suspected Mr. Halawa and Mr. al-Ajrami of involvement with militant groups, and thus detained them for questioning and transferred them out of the battle zone to an IDF post approximately one kilometer away. For security reasons, the detainees were blindfolded while they were being transferred to the post.

50. The consistent evidence was that at no time during the incident were either of the two individuals made to walk ahead of the soldiers or used as human shields. Rather, the two detainees walked surrounded by the soldiers as required by IDF operational procedures, both in order to protect the detainees as well as to reduce the possibility of their escape.

51. The investigation found no evidence to support the complainants' contention that they were physically abused while in IDF custody. In fact, this contention was contradicted by the records of Mr. al-Ajrami's medical examination at Shifa hospital soon after the incident. Similarly, the investigation determined that there were no grounds to attribute to IDF forces the vandalism or looting that may have occurred in Mr. al-Ajrami's home. The investigation noted that Mr. al-Ajrami told investigators that his family had failed to evacuate from the area partly due to their fear of burglaries and looting by other Gaza residents.

52. After reviewing the facts of the investigations, the MAG found that there were no grounds for any additional proceedings and closed both cases.

(4) AD/03

53. The *HRCFF Report* describes an incident involving an anonymous witness, AD/03, who alleged that he and others were improperly detained and coerced into assisting IDF forces during the Gaza Operation.[27] In reviewing these allegations and cross-referencing them with other available sources of information, Israeli investigators were able to establish the identity of AD/03 and determine that his case had already been reported to the IDF prior to the publishing of the report and was already the subject of a criminal investigation by the MPCID.[28]

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[26] The Al-Atatra neighborhood in which the incident occurred was an area of heavy fighting on the date in question. The neighborhood had been the site of multiple rocket launchings into Israel, prompting the IDF to take control of the area and search buildings for militants and weapons.

[27] *HRCFF Report* ¶¶ 1143-63.

[28] Acting through his Israeli lawyer, AD/03 sent a complaint regarding the incident to Israel's Attorney General. In accordance with Israeli procedure, this complaint was forwarded to the MAG, who ordered the opening of a direct criminal investigation.

54. At the outset of the criminal investigation, the MPCID contacted AD/03's lawyer to coordinate an interview with AD/03 at the Erez Crossing, where MPCID has taken testimony from dozens of Palestinian complainants in other cases related to the Gaza Operation, but AD/03 refused the requests. The lawyer asserted that AD/03 refused to be interviewed out of concern for his safety.

55. AD/03 continued to refuse to cooperate even though Israeli investigators explained that such testimony was essential to the criminal investigation. Taking detailed testimony from the complainant, including collection of any materials from the complainant that could be used to further the investigation, is a principal component of an MPCID investigation. The testimony is necessary not only to confirm allegations but also to identify the particular IDF unit and individuals that were allegedly involved. In the absence of a complainant's testimony, it is difficult for the military prosecution to build a sustainable criminal case, which requires proof of guilt beyond a reasonable doubt. Allegations contained in the *HRCFF Report* and various NGO and media reports would be considered inadmissible "hearsay" under the rules of evidence, and Israeli courts cannot rely on statements contained therein to prove criminal activity.

56. As of the date of this Paper, the case of AD/03 has been closed, but the IDF remains interested in interviewing him to learn more about the incident and complete the investigation. The IDF has given assurances that Palestinian witnesses who agree to come to the Erez Crossing point and provide testimony will be questioned by the MPCID only in relation to their complaints and will not be detained. These assurances are also applicable to AD/03.

57. It should be noted that some of the particular allegations cited in the complaint of AD/03, including the conditions of detention of Palestinians during the Gaza Operation, are the subject of a special command investigation described in the *January 2010 Update*.[29] That investigation is still ongoing.

B. Investigations Concerning the Alleged Targeting of Civilian Objects and Sensitive Sites

58. The principle of distinction is a core element of IDF standing orders. All IDF soldiers are instructed that strikes are to be directed only against legitimate military targets, combatants, and civilians directly participating in hostilities. IDF orders and doctrine strictly prohibit the intentional targeting of civilians or civilian objects. The principle of proportionality is also a core element, prohibiting attacks that are anticipated to harm civilians excessively in relation to the expected military advantage. IDF orders include the obligation to take all feasible precautions in order to minimize the incidental loss of civilian life or property,

[29] *January 2010 Update* ¶¶ 124-25; *see also* note 21, *supra*.

such as by adjusting the timing of an attack, the means of attack, and the direction of attack, as well as aborting attacks under certain circumstances.

59. As described in the *Operation in Gaza Report*,[30] in conformity with the Law of Armed Conflict, IDF operational orders also instruct that medical facilities should be provided absolute protection from attacks, unless they are being used by the enemy for military activities. In addition, special precautions are to be taken when conducting military activities near U.N. premises and other facilities dedicated for humanitarian use, such as those of medical organizations and hospitals.

60. Following the Gaza Operation, the IDF reviewed complaints regarding the alleged targeting of civilian objects, as well as claims of damage caused to medical and U.N. facilities.[31] These incidents were the subject of four special command investigations (one dedicated to damage to medical facilities, a second to U.N. facilities, a third dealing with incidents involving multiple civilian casualties and the most recent command investigation which is addressing several complex incidents).[32] In two of these cases, five officers were disciplined or sanctioned, two of them for violating IDF rules of engagement and three others for failing to exercise appropriate judgment. In other cases, the MAG review revealed that the damage did not violate the principles of distinction and proportionality and has found no basis for imputing any criminal intent to the IDF soldiers in the field or to the principal actors in the operations.

(1) Al-Fakhura Street

61. The *HRCFF Report* describes an alleged Israeli mortar strike in al-Fakhura Street in Jabalia, in close proximity to a United Nations Relief and Works Agency ("UNRWA") school used as a shelter, which reportedly caused a number of civilian casualties. This incident was discussed in the *Operation in Gaza Report*, which explained that Israeli forces fired on and eliminated a Hamas mortar squad that had fired repeatedly on them from a location approximately 80 meters from

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[30] *Operation in Gaza Report* ¶ 224.

[31] In the densely populated Gaza Strip there are over 750 U.N. facilities, and almost 1,900 sensitive facilities in total. Nonetheless, a relatively small number of complaints alleged damage caused to such sensitive facilities. The U.N. Board of Inquiry Report into certain incidents in the Gaza Strip found possible damage or injury by IDF action to seven U.N. facilities in the course of the Operation. Israel cooperated fully with the U.N. Board of Inquiry, sharing the results of its internal investigations and providing detailed information about the incidents in question. The Secretary General commended Israel for its extensive cooperation. Following the U.N. Board of Inquiry's examination, and notwithstanding certain reservations it had with some aspects of the Board's report, Israel entered into a dialogue with the United Nations to address all issues arising from the incidents examined. On 22 January 2010, the Secretary General again thanked Israel for its "cooperative approach" in these discussions and confirmed that all financial issues relating to these incidents had been satisfactorily concluded. U.N. Spokesperson Briefing (22 January 2010), *available at* http://www.unmultimedia.org/radio/english/detail/89687.html.

[32] *January 2010 Update* ¶¶ 103-12, ¶¶ 124-27.

the UNRWA school.[33] The MAG has now completed his review of the results of the special command investigation and found that IDF fire did not violate the Law of Armed Conflict.

62. The MAG found that the attack was directed against a legitimate military target and did not violate the principle of proportionality under the "reasonable military commander" test.[34] The MAG found that the Hamas mortar fire posed a clear and immediate threat to Israeli forces. In fact, the particular mortar rounds fired by Hamas over the course of an hour landed in very close proximity to Israeli forces. Only a day before, a mortar attack of a similar nature led to the wounding of 30 IDF soldiers.

63. The MAG also found that the commander was aware that the mortar attacks were being carried out from a populated area in the vicinity of an UNRWA school. For this reason, the commander took many precautions, including cross-verification of the source of fire by two independent means, using the most accurate weapon available, and making sure the school would not be hit by ensuring a safe buffer distance between the school and the targeted location. These precautions delayed the force's response, prolonging its exposure to the Hamas mortar fire.

64. Ultimately, the MAG determined that the anticipated collateral damage prior to initiating IDF mortar fire was not excessive when weighed against the expected military benefit, in light of the clear military necessity of the force to protect itself from ongoing mortar fire, the force's measured response, the relatively small area of dispersal, and the precautions taken.

65. The MAG also found that the IDF's choice of weapons was appropriate under the circumstances. The Israeli forces employed a burst of four 120mm "Keshet" mortar rounds, fired in quick succession. The Keshet mortar contains advanced target acquisition and navigation systems and was the most precise weapon available to Israeli forces at that time. Air support was not available to the unit under attack at that moment, and the Law of Armed Conflict does not require commanders to await air support and prolong soldiers' exposure to enemy fire.

66. Israel acknowledges that, while the strike was effective in removing the threat to Israeli forces, it also resulted in the regrettable loss of civilian lives. Although the MAG found that the IDF had not violated the Law of Armed Conflict with respect to this incident, as part of Israel's efforts to minimize civilian casualties under all circumstances, the MAG reiterated the recommendation of the special command investigation to formulate more stringent definitions in military orders to govern the use of mortars in populated areas and in close proximity to sensitive facilities. The IDF Chief of General Staff has ordered the undertaking of staff work to draft the required orders.

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[33] *Operation in Gaza Report* ¶¶ 336-40. The incident was described in the *HRCFF Report*, ¶¶ 653-90.

[34] *Operation in Gaza Report* ¶¶ 120-31.

(2) Al Maqadmah Mosque

67. The *HRCFF Report* and other sources alleged that on 3 January 2009 civilian casualties occurred inside the Al Maqadmah mosque in Beit Lahiya when an IDF missile struck the entrance to the mosque.[35] This incident was first examined in one of the original five special command investigations discussed in Israel's previous reports. This investigation could not substantiate that the mosque had been struck by IDF forces at the alleged time. However, in light of information included in other reports, the Chief of General Staff followed the MAG's recommendation that the case be reopened and reexamined in the context of a new special command investigation.

68. The new special command investigation confirmed that civilian casualties and damage to the mosque which occurred on 3 January 2009 were indeed a result of an IDF missile strike directed at two terrorist operatives standing near the entrance to the mosque.

69. These operatives, who belonged to a terrorist squad that was involved in the launching of rockets towards Israel, were initially identified standing in the vicinity of a hospital —and they were therefore not targeted at that time. The operatives were later identified at a different location in Beit Lahiya. At this point, the IDF began to deploy its assets for an immediate attack against the two terrorist operatives.

70. In the course of the preparations for the attack, the area of the strike was monitored closely and observed for several minutes. During this time, no civilians were visible in the surrounding streets, except for one who entered the building adjacent to the operatives. Since the location appeared to be clear of civilians, the strike against the operatives was initiated. The missile was directed at the operatives and struck the ground near the entrance to the building.

71. The investigation revealed that the military commanders planning the strike were not aware that the building next to the operatives was a mosque. The building did not have a minaret that might have identified it as a mosque and it was not marked as such on the operational maps used by the commanders. The commanders were also unaware that one of the entry doors to the building was open, since this could not be discerned from the observation. The investigation disclosed that, as a result of the open door, shrapnel from the missile flew into the mosque, resulting in a large number of casualties inside the mosque.

72. Based on these findings, the investigation concluded that the commanders who authorized the attack were not aware that the building adjacent to the target was a mosque and did not anticipate that there would be any civilian casualties as a result of the strike.

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[35] The incident was also described in the *HRCFF Report*, ¶¶ 822-43.

73. Nevertheless, the investigation found that an IDF Captain involved in the preparations for the strike had learned, just before the strike, but after it had already been approved, that the building might be a mosque. The officer gravely erred in exercising his judgment in failing to bring this information to the attention of his superior commanders so that they could reconsider the strike. In light of this finding, the officer was disciplined by means of a severe reprimand, taking into account the fact that he had not anticipated harm to civilians and given the time-sensitivity of the attack, which required quick action under extreme pressure. In addition, it was decided that the officer would not be allowed to serve in positions of a similar nature and responsibility in the future.

74. The command investigation also determined that two officers responsible for the selection of ammunition used in the air strike had also exercised poor professional judgment and deviated from professional guidelines when they used a more powerful missile than they had been directed to use. This was done because the requested missile was not available on short notice and the operation was highly time-sensitive. As the officers did not anticipate any civilian casualties from the strike, they did not foresee any additional risk to civilians resulting from using the selected missile. The officers were both sanctioned and temporarily suspended from taking part in operational activity.

75. After reviewing these findings, the MAG concluded that the strike did not target either civilians or civilian objects, since it was aimed at the terrorist operatives. As such, it abided by the principle of distinction.

76. The MAG also concluded that the strike did not violate the principle of proportionality because the decision makers in the operation did not expect harm to civilians, based on their observation of the area several minutes before the strike, and the information they possessed regarding the nature of the building. They also did not know and could not discern that the door to the building was open. In light of this, the anticipated incidental harm to civilians was low and the expected military advantage of the strike—targeting terrorist operatives involved in the launching of rockets towards Israel—was high.[36] The MAG further concluded that the negligence of some of the officers involved in the attack did not alter the good faith of the senior commanders in seeking to abide by the key norms of distinction and proportionality.

77. The MAG also determined that the disciplinary measures taken against the negligent captain, as well as the command sanctions against the officers in charge of munitions, were sufficient under the circumstances. The officers had not expected harm to civilians based on their observation of the area and were operating under extreme pressure due to the time-sensitivity of the strike.

[36] On that day alone, 39 rocket and mortar shells were launched from Gaza towards Israeli towns.

78. Even though no criminal proceedings were initiated in this case, the MAG has recommended a revision of IDF procedures and its implementation through additional training to ensure that the errors that led to this result will not be repeated.

(3) Hamas "Police" Stations in al-Sajaiyeh and Deir al-Balah

79. The legality of targeting Hamas's "police" force was extensively discussed in the *Operation in Gaza Report*.[37] As detailed in that report, Hamas military forces in Gaza were comprised not only of the Izz al-Din al-Qassam Brigades (Hamas's official military wing), but also included the internal security apparatus of Hamas in Gaza, which performed, in addition to their regular law enforcement tasks, significant military functions. One such force—and the most substantial in size—was the police force.

80. Extensive information gathered by the IDF prior to the Operation substantiated the military function of the police force in Gaza based on its military, operational, logistic and administrative ties and cooperation with the military wing of Hamas, both as a matter of routine and particularly during a state of emergency, for instance during an Israeli military operation inside the Gaza Strip.[38] This military function rendered the police force a legitimate military target.

81. Additional information gathered by the IDF both in the course of the Operation[39] and following its completion—including public statements made by Hamas officials—further confirmed that the police force in Gaza was intertwined with the military wing of Hamas. In fact, even the current minister of the Interior and National Security of the Hamas regime in Gaza—responsible for the internal security forces of Hamas, including the police—in listing the "achievements" of his predecessor, Sayid Siyyam, said that:

> "among the minister's greatest achievements was the creation of the cooperation and coordination between the current security services and the Palestinian resistance...against the Zionist enemy...and for that reason [the enemy] attacked the headquarters of the security services [during the Gaza Operation]".

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[37] *Operation in Gaza Report* ¶¶ 77-81, 237-48.

[38] Routine military activities by the Palestinian police in Gaza included: the gathering of intelligence about IDF activities, including surveillance; the provision of weapons to assist in the capabilities-building of Hamas's military wing; and participation in a variety of military training exercises. In a state of emergency, the police force was institutionally planned to be involved in fighting Israeli forces. The police have been observed performing this function during past operations of the IDF in the Gaza Strip.

[39] According to information gathered by the IDF, just before the beginning of the Gaza Operation, the internal security forces in Gaza prepared for re-deployment in anticipation of the fighting with the IDF. In the course of the operation, the internal security forces shared "operations rooms" with the military wing, cooperated with the intelligence units of the military wing, and gave preference to their military functions over law enforcement tasks.

(Hamas police website, May 7, 2009)[40]

82. The MAG has recently completed his review of the findings of command investigations into two aerial strikes on police stations reported in the *HRCFF Report*—one in al-Sajaiyeh and the other in Deir al-Balah—which allegedly resulted in civilian casualties.[41] These strikes were part of the Israel Air Force ("IAF") aerial campaign at the commencement of the Gaza Operation, aimed at weakening Hamas's terrorist and military strongholds and capacity by targeting its operational infrastructure. The MAG concluded that the strikes were mounted against legitimate military targets and thus complied with the principle of distinction.

83. The police station in Deir al-Balah was part of the "internal security" apparatus of Hamas, and was occupied by armed operatives. It was struck on the first day of the aerial campaign, as part of a coordinated IAF opening strike, intended to substantially weaken the military force available to Hamas during the Operation by concurrently attacking numerous military locations.

84. It was alleged that, as a result of the strike on the Deir al-Balah station, six civilians were killed, five of them while attending a nearby vegetable market. The investigation found that the IAF was not aware of the existence of the vegetable market, as the market's location had not been reported to the IDF in the past and thus was not marked as a "sensitive site" on IAF maps, which could have affected the planning of the air strike. In addition, it was not observed as a gathering place of civilians in aerial photographs analyzed by the strike's planners before the operation.

85. The IAF took several measures in order to minimize collateral damage, including the use of munitions with a warhead of reduced size and strength, equipped with a delay fuse.[42] Advanced warnings could not be given due to the timing of the strike, which required the element of surprise.

86. The al-Sajaiyeh police station served as the central station of the police force in that area, and was also occupied by armed Hamas operatives. It was attacked on the second day of the aerial campaign, intended to further destroy Hamas's operational and command infrastructures. Similar precautions to the ones implemented in the strike against the station in Deir al-Balah were used in this strike as well. Nevertheless, as a result of the attack, four civilians were reportedly killed in an adjacent street.

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[40] Intelligence and Terrorism Information Center, *Hamas and the Terrorist Threat from the Gaza Strip: The Main Findings of the Goldstone Report Versus the Factual Findings*, at pp. 271 (March 2010), *available at* http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/g_report_e1.pdf.

[41] *HRCFF Report* ¶¶ 405-07.

[42] Unlike a regular warhead, which will normally detonate upon impact with an object, a warhead with a delayed fuse will detonate within a structure, and thus will typically cause a more contained explosion with less debris and shrapnel.

87. The MAG reviewed the findings of the command investigations and concluded that both strikes were planned and executed in accordance with the Law of Armed Conflict. The MAG noted that, despite the unfortunate death of civilians, in both cases the anticipated collateral damage to civilians was not excessive in relation to the expected military advantage of the strike, due to the strategic importance of the strikes conducted on the first days of the Operation against Hamas's operational and command infrastructures and their substantial contribution to the ability of the IDF to achieve the goals of the Operation as a whole. Accordingly, the MAG decided not to refer either of the cases for additional proceedings.

88. Nonetheless, the findings of the command investigations will be studied as part of the operational "lessons learned" analysis, in order to consider measures which can minimize the danger to civilians in future military actions. In this regard, the MAG has recommended improvements regarding the mapping of "sensitive sites." Currently, these sites are identified by the IDF based on information received from various sources regarding certain types of facilities, such as: hospitals, schools, mosques, and U.N. facilities. In light of the findings of the investigation of the Deir al-Balah station strike, the MAG recommended the broadening of this list to include places of large civilian gatherings, such as open markets.

(4) Hamas Security Force Building adjacent to the Main Prison

89. The IDF investigated allegations that on 28 December 2008 the main prison complex inside the al-Saraya compound in Gaza City was deliberately targeted in an air strike.[43]

90. The command investigation of this incident confirmed that an IAF aerial attack on 28 December caused damage to prison facilities within the al-Saraya compound. However, the damage occurred because the prison was located immediately adjacent to the barracks building used by Hamas internal security forces. The barracks—which were the object of this strike—were a legitimate military target.[44] Incidental damage occurred to several smaller structures within the prison complex and led to the collapse of several prison walls. The central structure of the prison remained standing. The damage also led to the death of one prison guard and injury to several other guards. No prisoners were injured in the attack.

91. Upon review, the MAG found that the attack did not violate the Law of Armed Conflict. The IDF attack targeted a specific military facility, taking precautionary measures, including the use of precision technology. Under these circumstances, the MAG determined not to pursue any further proceedings.

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[43] *HRCFF Report* ¶¶ 365-70.

[44] *See* ¶¶ 79-81, *supra*, and accompanying notes.

(5) UNRWA Field Office Compound

92. One of the most widely reported incidents during the Gaza Operation involved the UNRWA field office compound, where three individuals were injured and significant property damage resulted from the use of smoke-screen munitions containing white phosphorous. Additional damage occurred due to the use of high explosive shells in the vicinity of the compound.[45]

93. A special command investigation, devoted to examining claims of damage to U.N. facilities by IDF forces, included an investigation of the UNRWA incident, and factual findings of that investigation were reported in the *Operation in Gaza Report*.

94. With regard to the use of high explosive shells in the incident, based on the findings of the investigation, the Commander of the Southern Command disciplined two senior commanders, a Brigadier General and a Colonel, for authorizing the use of the shells in violation of the safety distances required in urban areas set forth in IDF operational orders. The MAG reviewed the results of the investigation and concurred with the decision to discipline the two officers. He also determined that, even though the shelling was carried out in violation of IDF operational orders, no criminal charges were appropriate because the shelling was aimed at military targets, and because precautions were taken which proved effective in avoiding civilian casualties.

95. With regard to the use of the smoke-screening munitions, the MAG found that the investigation did not demonstrate any violations of the Law of Armed Conflict or IDF procedures. As explained in the *Operation in Gaza Report*, this type of munition is not prohibited under international law, even in urban areas.[46] In the particular circumstances of this case, the MAG determined that the use of these munitions was needed to protect Israeli forces from Hamas operatives armed with anti-tank missiles[47] and complied with the requirement of proportionality, as the anticipated risk to civilians and civilian objects stemming from their use was not excessive in relation to the expected military advantage.

96. The investigation did find that the actual damage to the compound as a result of the smoke-screening shells was more extensive than the IDF had anticipated. Following reports of the damage, the IDF immediately imposed revised restrictions on the use of smoke-screening munitions containing white phosphorous near sensitive sites (including the requirement of a several hundred meters buffer zone). These restrictions were in place through the remainder of the Gaza Operation.

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[45] This incident was also described in the *HRCFF Report*, ¶¶ 543-98.

[46] *Operation in Gaza Report* ¶¶ 405-30.

[47] *Id.* ¶¶ 341-47.

97. The use of smoke-screening munitions containing phosphorus during the Gaza Operation was also addressed in a special command investigation dedicated to the issue. This investigation determined that the policy of using such munitions was consistent with Israel's obligations under the Law of Armed Conflict. Nonetheless, following that investigation, the Chief of the General Staff ordered the implementation of the lessons learned from the investigation, particularly with regard to the use of such munitions near populated areas and sensitive installations. As a consequence, the IDF is in the process of establishing permanent restrictions on the use of munitions containing white phosphorus in urban areas.

C. Investigations Concerning the Alleged Targeting of Civilians

98. As mentioned above and also detailed in the *Operation of Gaza Report*,[48] IDF standing orders incorporate the principle of distinction and prohibit the intentional targeting of civilians. This section discusses the results of several investigations of incidents in which IDF military operations resulted in the death of civilians, allegedly in violation of the Law of Armed Conflict and the IDF standing orders. In one of the cases, an indictment has been filed against a soldier suspected of killing a civilian. Other cases have not uncovered evidence justifying disciplinary proceedings or a criminal indictment but nevertheless resulted in lessons learned and operational adjustments by the IDF intended to further minimize the possibility of similar events happening in the future.

(1) Juhr ad-Dik Incident

99. Following information received by the MAG, a criminal investigation was opened into an incident involving a soldier who opened fire, killing a civilian who was walking with a group of civilians carrying white flags in the village of Juhr ad-Dik on 4 January 2009.

100. According to the investigation, the soldier discharged his firearm in a manner inconsistent with orders given to him by his superior officer.

101. In light of the time and place of the incident, investigators believed that the case corresponded to allegations regarding the deaths of Majda and Rayya Hajaj described in the *HRCFF Report*.[49] There were, however, a number of inconsistencies between the two accounts, which prevented the investigators from making a positive identification of the civilian killed.

102. Nonetheless, since the evidence gathered in the course of the investigation implicated the soldier in a shooting incident of a civilian in deviation from orders,

[48] *Id.* ¶¶ 222--23.

[49] *HRCFF Report* ¶¶ 764-69.

the MAG has ordered the indictment of the soldier on the charge of manslaughter for the killing of a civilian during the Gaza Operation.

(2) Rouhiya al-Najjar

103. This incident—involving the death of Rouhiya al-Najjar on 13 January 2009 in the village of Khuza'a—was reported to the Israeli authorities by several human rights organizations.[50] After examining the results of a command investigation regarding this incident, together with the complaints that had been received, the MAG determined that the facts available led to a significant suspicion of criminal behavior, and referred the case for an MPCID criminal investigation. The MPCID investigation included interviews with eight Palestinian residents of Gaza, including members of the al-Najjar family. Investigators also questioned more than fifteen IDF soldiers and officers regarding the incident, and studied aerial and ground photographs.

104. The investigation found that the IDF unit operating in the Khuza'a area on 12 January 2009 was involved in active combat with terrorist operatives. The operatives launched a rocket-propelled grenade ("RPG") missile towards the building occupied by the IDF unit in the early morning hours of 13 January.

105. Later that morning, the soldiers were still carefully monitoring the area adjacent to the building in order to prevent additional rocket attacks. The soldiers observed suspicious activity in the street leading to the building: a woman was identified repeatedly approaching the building carrying an unidentified package, which she placed near the building. Immediately after she returned and entered a house down the street, a group of local women unexpectedly began approaching the IDF position, and the soldiers suspected a tactic that could conceal a gunman or suicide bomber. One of the soldiers fired a warning shot to prevent the group from advancing further. A ricochet from this warning shot apparently struck Rouhiya al-Najjar, killing her.

106. The MAG reviewed the testimony collected in the course of the investigation and concluded that, under the circumstances, the soldier who fired the shot was not criminally liable. The MAG concluded that the soldier fired his weapon in light of the security need to keep the group from approaching the IDF post and his shot was not intentionally directed to hit or harm civilians. Thus, while acknowledging the lamentable results of the incident, the MAG closed the case without filing a criminal indictment against the soldier.

107. However, the MAG did find that a lapse in effective communication between IDF units may have played a part in the soldier's perception of the group as a threat. This led the MAG to recommend certain changes to IDF operational procedures, which could assist in improving the manner in which evacuation instructions are

[50] The incident was also described in the *HRCFF Report*, ¶¶ 780-87.

given to the civilian population by the IDF, as well as to the method for relaying such information among the different forces in the field.

(3) Amal, Souad, Samar, and Hajja Souad Abd Rabbo & Adham Kamiz Nasir

108. This incident involved the alleged shooting of four Palestinian civilians on 7 January 2009 in the neighborhood of Izbat Abd Rabbo, and was reported to Israeli authorities by several human rights organizations.[51] The MAG referred the complaint to a direct criminal investigation which was recently concluded. In the course of this comprehensive investigation, the MPCID collected testimony from eleven Palestinians who witnessed the events. Some of them were unable or unwilling to testify before MPCID investigators, but provided detailed affidavits. In addition, the investigators reviewed medical reports and death certificates, as well as aerial photographs provided by an Israeli NGO, which helped identify the different units involved in the incident. More than fifty commanders and soldiers from these units were also questioned by the MPCID. Some were questioned multiple times in order to clarify the circumstances of the case.

109. The evidence collected in the course of the investigation could not confirm the description of the incident by the complainants, who claimed that a soldier standing on a tank had opened fire at a group of civilians. The substantial discrepancies between the complaint and the findings of the investigation—in particular, the identity of the force and the sequence of events—led the MAG to conclude that the evidence was insufficient to initiate criminal proceedings.

110. A second part of the complaint alleged that the IDF fired at a horse-driven carriage attempting to evacuate the civilians injured in the first shooting incident and subsequently killed the carriage's driver.

111. The investigation confirmed that the carriage was fired upon by an IDF unit operating in the Izbat Abd Rabbo neighborhood. The unit had received a concrete warning that Hamas planned to send such a carriage loaded with explosives to detonate near an IDF position. The soldiers fired warning shots at the approaching carriage, which was loaded with bags that the soldiers thought contained explosives. When the carriage did not respond to the warning shots and continued its approach, the unit fired in its direction.

112. Under these circumstances, the MAG determined that the soldiers who fired at the carriage were not criminally liable. The MAG found that the soldiers' decision to fire was made in light of their belief, at the time, that the carriage posed an immediate threat to the force. (The investigation revealed that the bags did not contain explosives.) Thus, despite the unfortunate results of the incident, the MAG decided to close the case.

[51] The incident was also partially described in the *HRCFF Report*, ¶¶ 770-79.

(4) Abd al-Dayem

113. This incident, involving an alleged attack on the Abd al-Dayem condolence tents in Beit Hanoun on 5 January 2009 using flechette munitions, and resulting in the deaths of civilians, was reported to Israeli authorities by several human rights organizations.[52] After examining the results of a command investigation regarding this incident together with the complaints that had been received, the MAG referred the case for an MPCID criminal investigation, which was recently concluded.

114. In the course of this investigation, the MPCID collected testimony from eighteen Palestinian witnesses and a number of soldiers from the relevant force. Investigators also obtained and considered physical evidence such as medical reports and photographs received from an Israeli NGO. Two technical experts were consulted regarding the munitions used in this incident and their effects. Investigators also reviewed technical manuals regarding the operation of the munition.

115. The investigation revealed that a tank crew operating in Beit Hanoun had visually identified a squad of terrorist operatives in open terrain, loading a "Grad" rocket[53] onto a launcher. (Many such rockets were launched towards Israel before and during the Operation.) During the Gaza Operation, this was an area frequently used by terrorist operatives to launch rockets towards Israel. The tank commander immediately began preparing a strike to prevent the imminent terrorist attack on Israeli civilians.[54] Since the operatives were at a distance of approximately 1,500 meters away from the force, the use of machine guns would be ineffective. The tank commander therefore decided to use flechette shells, based on an assessment that they would be the most effective in open terrain. The tank crew observed the area surrounding the terrorist squad and did not identify any civilians in the vicinity. Hence two successive flechette shells were fired at the operatives, killing them.

116. The investigation found that, although the shells were aimed at and hit the terrorist squad in open terrain, darts from the flechette shells could have incidentally struck civilians near the Al Dayem condolence tent. However, the investigation confirmed that the soldiers did not identify any civilians in the vicinity of the terrorist squad, and therefore did not foresee the harm to the civilians near the tent.

117. The MAG reviewed the findings of the investigations and determined that the actions of the tank crew did not violate the Law of Armed Conflict. The flechette shells were launched against a military target in order to prevent an imminent

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[52] The incident was also described in the *HRCFF Report*, ¶¶ 867-85.

[53] A "Grad" is a 122mm foreign manufactured artillery rocket with a range of 20 kilometers.

[54] Thirty-two rocket and mortar shells were fired at Israel in the course of that day.

threat to Israeli civilians. The force did so in the reasonable belief that no civilians were present in the immediate vicinity of the terrorist squad. The use of these munitions is not prohibited under international law, as confirmed by Israel's Supreme Court and discussed in the *Operation in Gaza Report*.[55] The force acted in accordance with the applicable rules of engagement, which allowed the use of flechette shells against military targets located in open terrain. Therefore, despite the tragic consequences of the incident, the MAG determined that no further proceedings were required.

D. Investigations Concerning Damage to Private Property

118. As described in the *Operation in Gaza Report*, IDF's operational orders for the Gaza Operation mandated that private property must be respected. In accordance with the Law of Armed Conflict, the destruction of civilian property was prohibited, except in cases of imperative military necessity which required that the damage be proportional to the military advantage. The destruction of property for deterrence or retribution was strictly forbidden.[56]

119. Immediately after the cessation of hostilities, Israel launched a special command investigation into the manner in which the IDF carried out this mandate during the conflict.[57] In addition, the IDF has conducted specific command investigations to examine particular incidents of destruction of property. The MAG has carefully reviewed the results of the investigations completed so far.

120. The following are three specific cases of significant property damage discussed in the *HRCFF Report* in which the MAG has completed his review of the facts and issued a final opinion. In addition, a further investigation of the el-Bader flour mill case (described in the *January 2010 Update*) is presented below.

121. These incidents highlight the difficulties posed by terrorist groups that operate within densely populated civilian areas and near economic facilities. During the Gaza Operation, Israeli forces made extensive efforts to avoid civilian casualties and unnecessary damage to civilian property. Even so, fighting an adversary that deliberately made use of civilian buildings to store ammunition, mount attacks, and conceal combatants—as well as booby-trapping civilian buildings with explosives along the expected path of advancing forces—created enormous operational dilemmas. Israel has acknowledged that significant damage was caused to civilian property as a result of the events of the Gaza Operation. As described in more detail in Section IV, Israel is adapting and revising its military procedures to further minimize damage to civilian property in the future.

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[55] *Physicians for Human Rights v. OC Central Command*, HCJ 8990/02 (27 April 2003); *Operation in Gaza Report* ¶¶ 431-35.

[56] *Operation in Gaza Report* ¶ 226.

[57] *Id.* ¶¶ 318, 436-45; *January 2010 Update* ¶¶ 113-16.

(1) The Sawafeary Chicken Coops

122. According to allegations included in the *HRCFF Report*,[58] in January 2009 IDF forces bulldozed several chicken coops owned by the Sawafeary family in Zeytoun, purportedly as part of a deliberate strategy of destroying civilian infrastructure.

123. The command investigations conducted with regard to this incident reveal that the Sawafeary chicken coops were destroyed for reasons of military necessity.

124. Specifically, the investigations revealed that the area around the Sawafeary chicken coops was occupied by an IDF ground force beginning on 4 January 2009, as part of the ground maneuver, with the intention to take control of rockets and mortar launching sites and reducing the number of terror attacks on Israeli territory. The force took positions in several houses, including one house that was adjacent to the chicken coops. This positioning was necessary to secure the area for military operations against Hamas and to protect the IDF troops in those operations. The IDF's defense plan for this area needed to meet three serious threats to the safety and security of the IDF troops: the firing of anti-tank and RPG missiles on IDF positions; sniper fire; and infiltration of terrorist operatives into the immediate vicinity of the forces in order to plant and detonate explosive devices, including by suicide bombers.

125. The terrain in the area made this location more dangerous for IDF forces. The area was agricultural in its original use and thus included many orchards, groves, and greenhouses, located between and around the houses occupied by the IDF. This made it harder for the IDF to identify Hamas positions and fighters. The threat was not theoretical—on 5 January 2009, an RPG missile was launched at one of the IDF positions in that area. In addition, several shooting incidents occurred originating from the orchards located to the south of the chicken coops.

126. In order to overcome these threats, the IDF decided to create a security zone around each of the IDF positions with a perimeter of 20–50 meters around each post, which would allow uninterrupted observation and firing capabilities for the force in each position, as well as joint protection among the different IDF outposts. These security zones allowed IDF forces to anticipate at an earlier stage the approach of terrorist operatives.

127. The Sawafeary chicken coops were located only a few meters away from one of the key IDF positions. The IDF position was, itself, dictated by the lay of the terrain in the area. As the command investigation determined, this IDF position could not be adequately secured if the chicken coop structures were left intact. The demolition of these structures was needed to allow a clean line of sight for protection of IDF forces. The investigation also determined that the decision to

[58] *HRCFF Report* ¶¶ 942-61.

destroy the coops was consistent with the demands of the principle of proportionality: there was a compelling military need for the area to be cleared for the safety of the IDF forces and for the success of IDF operations against the Hamas forces operating in the area. The local commanders determined that these advantages outweighed the damage to private property that would result from the demolition. The commanders avoided the destruction of residential buildings or other facilities in the area, when such destruction was not required by military necessity or appeared to be disproportional.

128. The MAG reviewed the findings of the command investigation and concluded that the destruction of the chicken coops was lawful, as it was necessary to protect IDF forces operating in the area. It did not violate the limitation on destruction of private property because it was justified by military necessity. The MAG also found that the destruction of the chicken coops did not violate the ban on destroying any object that is indispensable to the survival of the civilian population. It was dictated by the location of specific operations against Hamas, and not part of a campaign to interfere with the production of food supplies in Gaza. It was not intended to deny the civilian population in Gaza access to essential commodities.[59] As a result of these findings, the MAG determined that no further proceedings were necessary.

129. Although the MAG found no violation of the Law of Armed Conflict in this incident, he recommended several changes to IDF procedures in cases involving destruction of private property, which are detailed below in Section IV of this Paper. In particular, the MAG found that the decision to destroy the chicken coops was made by a relatively junior IDF officer, and that such decisions were more appropriately and typically made at more senior levels. While the MAG found that the particular rank of the officer making the decision did not indicate wrongful or criminal conduct (as neither the Law of Armed Conflict nor IDF procedures at the time required that such decisions be taken by an officer of any particular rank), he has recommended that the IDF's procedures for destruction of civilian property be reviewed in several respects, as detailed in Section IV below.

(2) The Abu Jubbah Cement-Packaging Plant

130. According to allegations included in the *HRCFF Report*,[60] in January 2009, the IDF wrongfully destroyed a cement-packaging plant owned by Mr. Atta Abu Jubbah, utilizing both aerial and ground attacks. This was allegedly part of a deliberate strategy of gratuitous destruction of civilian infrastructure in Gaza.

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[59] In particular, during the course of 2009, over 230 truckloads of fertilized chicken eggs (intended to hatch) were transported by Israel to the Gaza Strip, in addition to immunizations and food for chickens. More than 130 more trucks carrying fertilized chicken eggs have been transported to Gaza since the beginning of 2010.

[60] *HRCFF Report* ¶¶ 1012-17.

131. The incident was investigated by both IDF ground forces and the IAF.[61] These investigations concluded that the cement plant was not the target of any aerial attacks, nor was artillery fire directed at it. Instead, it was damaged in the course of intense fighting that took place in the immediate area of the plant, including IDF efforts to locate and destroy an intricate tunnel system that was dug by Hamas. These tunnels were intended both to strengthen Hamas's operating capabilities and to help it execute plans to attack or capture IDF soldiers.

132. The investigation also concluded that the IDF soldiers believed that the plant was being used by Hamas operatives to position themselves to attack and kidnap Israeli soldiers.

133. While artillery shells were neither directed at the plant nor landed inside it, operations in that area did involve IDF artillery fire at military targets near the factory, and the shrapnel from these shells may have caused structural damage to the plant. In addition, IDF tanks and bulldozers entered the plant while searching for tunnel infrastructure, causing damage to some of the pillars holding the factory's roof. As a result, the factory roof partially collapsed.[62]

134. The MAG reviewed the results of the command investigations and determined that the damage caused to the cement-packaging plant was incidental to the combat activities in the area and proportionate to the military need under the circumstances. As a result of these findings, the MAG determined that no further proceedings were necessary.

(3) The Al-Wadiyah Group's Factories

135. According to allegations made in the *HRCFF Report*,[63] the IDF gratuitously destroyed factories belonging to the al-Wadiyah Group which were engaged in the manufacture of a variety of snacks. The *HRCFF Report* cites the incident as evidence of a deliberate strategy to deprive the population of essential commodities.

136. This allegation was also investigated by the IDF. As the command investigation found, the factories were in the area of Izbat Adb Rabbo, where Hamas had concentrated significant military resources. The IDF forces encountered a constant

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[61] This kind of parallel investigation would take place whenever concerns regarding the activities of various branches of the military are raised in an investigation. A similar dual-track investigation took place in the case of the investigation of damages at the Al-Bader flour plant, discussed in detail in the *January 2010 Update*, ¶¶ 163-74.

[62] Contrary to some reports, the IDF investigation revealed that the damage to the factory was limited. For instance, while several reports alleged that the IDF destroyed a silo used to contain large amounts of cement, IDF aerial photos indicate that it was still standing at the end of the Operation. While this does not rule out the possibility that damage was caused to the structure, it does support the finding that the plant was not targeted intentionally and that the damage caused to the plant was incidental.

[63] *HRCFF Report* ¶¶ 1018-20.

barrage of hostile fire from the area, reflecting Hamas's control of the surrounding neighborhoods. The area is also close to the Gaza border with Israel and has served as a base for terrorist attacks directly against Israel. The area was therefore a focus of IDF operations.

137. As the command investigation concluded, IDF forces fighting in the area near the factories discovered a well-prepared military infrastructure, including an extensive network of underground tunnels used by Hamas operatives to fight the IDF forces. The military infrastructure in that area also included booby traps and improvised explosive devices ("IEDs") planted under the main roads and in civilian buildings, as well as in the civilian buildings used by Hamas as its military posts.

138. An IDF unit encountered military operatives leaving one of the al-Wadiya factories. In response to the attack, and in light of the concern about the use of the factories and the tunnels in their vicinity as a continuing threat to IDF forces in the immediate area, the IDF force decided to demolish the buildings. The investigation found that the IDF forces did not know the structures were used to produce food products.

139. The MAG reviewed the findings of the command investigations and concluded that the demolition of the buildings was lawful, as it was necessary to protect IDF forces operating in the area. The MAG found that it did not violate the rules on protection of private property since it was justified by military necessity.[64] The MAG also found that the destruction of the factories was not intended to deny the civilian population in Gaza commodities indispensable to its survival. The purpose of the demolition was instead to protect IDF forces operating in the area and not to prevent the civilian population from having access to essential commodities (regardless of whether the products made in the factories qualify as essential). Based on these findings, the MAG determined that no further proceedings were necessary.

140. Although the MAG found no violation of the Law of Armed Conflict in this incident, he recommended several changes to IDF procedures in cases involving destruction of private property, as detailed below in Section IV.

(4) The El-Bader Flour Mill

141. The case of the el-Bader flour mill was discussed in the *January 2010 Update*. It concerns allegations that the mill had been targeted with precision weapons in the course of a pre-planned air strike, as part of a systemic destruction of industrial infrastructure and with the purpose of depriving the civilian population of Gaza of food supplies. The IDF investigation into the matter concluded instead that the mill was been struck by a tank shell in the course of active combat activities, in order to neutralize immediate threats to IDF forces.

[64] *See Operation in Gaza Report* ¶ 436.

142. Following the publication of the *January 2010 Update*, various news media stated in February 2010 that the U.N. was in possession of evidence that contradicted the findings of the IDF investigation. Specifically, it was reported that an unexploded IAF bomb was found in the mill, even though the command investigation had concluded there had been no aerial strike.[65]

143. Upon reviewing these reports, the MAG requested and received additional evidence from the U.N. and ordered the IAF to re-open its investigation of the incident. The MAG also initiated a meeting with U.N. representatives, who had visited the site of the mill, to discuss their findings. The follow-up investigation confirmed the earlier finding that the mill had not been targeted by the IAF in the course of a pre-planned attack. The new reports, photographs taken by U.N. officials, and video footage examined appeared inconsistent with an airborne strike, particularly given the absence of entry holes in the roof of the mill; the lack of trace marks on the floor where the shell was allegedly found (such trace marks would normally be expected when such a munition penetrates a building); and the fact that the fire which damaged the machinery in the mill broke out on the second floor while the ordnance was found on the first floor.

144. Furthermore, the IAF examined every aerial attack in the vicinity of the mill in the course of the Gaza Operation and found that none of them could have resulted in a hit on the flour mill. Of the seven strikes conducted within a one-kilometer radius of the mill using the particular munitions identified, five had hit their precise target (the closest one being approximately 300 meters away from the mill). The impact sites of the two additional strikes were visible in the IAF aerial footage of the operation, and the closer of the two landed a full 350 meters from the mill.

145. After reviewing the findings of this additional investigation, the MAG could not affirmatively determine how the ordnance had found its way into the mill, but reaffirmed that the flour mill had not been intentionally targeted by the IAF. He was also unable to rule out the possibility that the ordnance had been deliberately planted in the mill. Accordingly, the MAG determined that there was no basis for additional proceedings in this matter.

[65] This discrepancy was important not only because of its effect on the credibility of the IDF command investigation, but also because of the perception of a pre-planned air strike intended to destroy the mill.

IV. SUMMARY OF CHANGES TO MILITARY OPERATIONAL GUIDELINES AS A RESULT OF INVESTIGATIONS OF GAZA OPERATION

146. The Gaza Operation presented complex military challenges in protecting civilians from the hazards of battle. Urban warfare and the cynical choice made by Hamas to imbed itself in civilian urban areas and to use civilian structures as shields contributed to the great challenges for Israeli air and ground forces. The IDF nonetheless made extensive efforts to avoid civilian casualties and limit damage to private property, as well as to ensure that Israeli military activities were conducted in compliance with the Law of Armed Conflict and Israel's own stringent ethical and legal requirements.

147. Israel recognizes that, despite these efforts, the Gaza Operation resulted in numerous deaths and injuries to Palestinian civilians and considerable damage to private property. The Government of Israel did not wish these losses. Israel believes that the fact that Hamas chose to conduct its military operations from urban areas and to put its own civilian population at risk significantly contributed to the number of casualties and extent of harm to civilian property in the course of the Operation.

148. Israel will continue to conduct comprehensive investigations into every allegation of misconduct by the IDF during the Gaza Operation. Aside from the review conducted by the MAG of legal aspects of such investigations, the factual findings will be valuable in drawing "lessons learned"—a self-scrutiny conducted by the IDF as a responsible and professional military. The effort to protect civilians and avoid damage to civilian property is a core concern, and will remain such in any future military operations.

149. In particular, the IDF has issued two new Orders designed to further increase the protection of civilians and civilian property during armed conflicts.

A. New written procedures regarding the protection of civilians in urban warfare

150. The IDF has adopted important new written procedures and doctrine designed to enhance the protection of civilians in urban warfare, including by further emphasizing that the protection of civilians is an integral part of a commander's mission. In addition, the procedures require increased attention to civilian matters in operational planning. Although protection of civilians during military operations has long been part of IDF training and doctrine, the new procedures mandate additional comprehensive protection. These revised procedures stem from general understandings and lessons learned both in Gaza and other military operations conducted by Israel in recent years.

151. The new procedures and doctrine also specify steps to better insulate the civilian population from combat operations and to limit unnecessary damage to civilian property and infrastructure, and require integration of civilian interests into the planning of combat operations. This involves advance research into and the precise identification and marking of existing infrastructure, including that pertaining to water, food and power supplies, sewage, health services, educational institutions, religious sites, economic sites, factories, stores, communications and media, and other sensitive sites as well as cultural institutions.

152. Furthermore, the new written procedures mandate the planning for a number of additional provisions aimed at safeguarding the civilian population. This includes: safe havens for civilians to take refuge; evacuation routes for civilians to safely escape combat areas; medical treatment for civilians; methods for effectively communicating with and instructing the population; and provisions for humanitarian access during curfews, closures and limitations on movement. Finally, the new written procedures require the assignment of a Humanitarian Affairs Officer integrated in each combat unit beginning at the battalion level and up,[66] with responsibilities for advising the commanding officer and educating the soldiers with regard to: the protection of civilians; civilian property and infrastructure; the planning of humanitarian assistance; the coordination of humanitarian movement; and the documentation of humanitarian safeguards employed by the IDF.

153. While the majority of these issues were already addressed in various operational orders and guidelines in existence prior to the Gaza Operation, the new revised procedures are important because they are comprehensive and applicable to all stages of military operations, including the crucial stage of planning.

B. New Order Regulating the Destruction of Private Property for Military Purposes

154. In the aftermath of the Gaza Operation, the destruction of private property and infrastructure by ground forces was the subject of one of the five special command investigations ordered by the IDF Chief of General Staff. One of the lessons learned from this investigation was that there should be a set of clear rules and guidelines to assist commanders in making such decisions.

155. Accordingly, upon the Chief of the General Staff's instructions, a new Standing Order on Destruction of Private Property for Military Purposes was formulated. This new standing order, entered into force in October 2009, and addresses in clear terms when and under what circumstances civilian structures and agricultural

[66] This is supplemental to other humanitarian mechanisms which were established in the past and were in place during the Gaza Operation, such as a 24-hour operations room by the Gaza Coordination and Liaison Administration to facilitate communication between IDF and international organizations, as described in the *Operation in Gaza Report*, ¶¶ 266-82.

infrastructure may legitimately be demolished in circumstances of imperative military necessity. It clarifies the applicable legal criteria and limitations and allocates specific command responsibility and hierarchical authority for decision-making.

156. Following the issuance of this new Standing Order, the IDF continues to study the issue of protection of private property and to consider additional changes to its procedures. For instance, the MAG, in the course of his review of a specific incident involving destruction of property, has recommended several additional clarifications to the new order, including: (a) identifying more clearly sites that are considered to be especially "sensitive" and whose destruction should require more senior level of approval; (b) analyzing and addressing how the issue of proportionality should be implemented in different situations; and (c) better incorporating the new Standing Order at all levels and regions of command.

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157. Israel's prior reports on its investigations of the Gaza Operation described other operational changes that the IDF is considering or implementing based on lessons learned in the command investigations. These include:

a. In connection with the review of operations affecting incidents involving harm to U.N. and other international facilities, the IDF Chief of General Staff re-emphasized the importance of better familiarizing IDF units at all levels with the location of sensitive facilities within their assigned combat zones. He ordered that regulations regarding safety distances from sensitive facilities be highlighted, specifically with regard to the use of artillery, and also ordered that additional steps be looked at to improve the coordination between the IDF and U.N. agencies in the field.

b. The IDF Chief of General Staff has ordered improvement in training and procedures, including practice by all forces in "incidents and responses" drills with specific humanitarian aspects, including involving prevention of harm to medical crews, facilities and vehicles. He also ordered an examination of the operation of the humanitarian corridors opened for the benefit of the local population during the fighting. The formulation of a new operational order on this topic is underway.

c. The IDF Chief of General Staff ordered the establishment of a clear doctrine and orders on the issue of various munitions which contain white phosphorous. These instructions are currently being implemented.

V. THE TURKEL COMMISSION MANDATE TO EXAMINE ISRAEL'S SYSTEM OF INVESTIGATIONS

158. While the State of Israel is confident in the thoroughness, impartiality, and independence of its investigatory system, in light of recent criticisms concerning Israel's mechanisms for examining and investigating complaints raised in relation to violations of the Law of Armed Conflict, the Government of Israel has mandated an independent public commission to examine the conformity of these mechanisms with Israel's obligations under international law, as detailed below.

159. On 14 June 2010 an independent public commission was set up by the Government of Israel to address issues pertaining to a maritime incident involving the IDF which occurred on 31 May 2010, and which is unrelated to the Gaza Operation. The Commission is headed by retired Justice of Israel's Supreme Court Yaakov Turkel, joined by Professor Shabtai Rosenne, a leading expert in international law, and Amos Horev, a retired general and former president of the Technion—Israel Institute of Technology. In addition, two international observers, Nobel Peace Prize Laureate Lord William David Trimble from Northern Ireland and former Canadian Judge Advocate General Kenneth Watkin, were appointed to participate in the Commission's hearings and proceedings.

160. In addition to its responsibilities related specifically to the maritime incident, the Commission's scope of responsibility includes a broad mandate that goes beyond the events of 31 May 2010 and includes examining:

> the question of whether the mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict, as conducted in Israel generally, and as implemented with regard to the present incident, conform with the obligations of the State of Israel under the rules of international law.[67]

161. Thus, one of the central tasks of the new independent public commission is to examine and assess the current mechanisms in place in Israel for investigating allegations of a violation of the Law of Armed Conflict. The mechanisms under review are the same mechanisms that are implemented in the investigations relating to the Gaza Operation and which were discussed in detail in this Paper and the two previous reports.

162. The Government's decision sets forth that every relevant governmental body will cooperate fully with the Commission and will make available to the Commission information and documents required by it for the purposes of performing its

[67] Israeli Ministry of Foreign Affairs, *Government Establishes Independent Public Commission* ¶ 5 (14 June 2010), *available at* http://www.mfa.gov.il/MFA/Government/Communiques/2010/Independent_Public_Commission_Maritime_Incident_31-May-2010.htm.

function. Furthermore, the Commission has the power to subpoena witnesses, to enforce their appearance before the Commission, and to compel their testimony.

163. Upon completion of its work, the Commission will submit a report to the Government of Israel, by way of the Prime Minister. The report will also be made available to the public.

VI. CONCLUSION

164. Since the *January 2010 Update*, Israel has made significant progress investigating allegations of misconduct by the IDF during the Gaza Operation. Israel has devoted extensive resources to conducting thorough and independent investigations, including interviews of hundreds of IDF soldiers and Palestinian civilians.

165. The IDF has conducted numerous command investigations of operational activity in the course of the Operation. The MPCID has opened 47 criminal investigations, and the MAG has initiated criminal prosecutions of four soldiers in separate incidents. Six officers have been disciplined or subject to command sanctions.

166. In other cases, the MAG has concluded that IDF actions did not violate the Law of Armed Conflict or IDF orders. Israel's investigations are ongoing, and Israel remains committed to investigating allegations regarding violations of the Law of Armed Conflict.

167. As part of its continuous learning process, the IDF has also made numerous changes to its operational procedures and policies in order to further enhance the protection of civilians from the hazards of battle and the protection of private property during military operations.

Annex II

Letter dated 12 July 2010 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General

The present letter is being conveyed to you in connection with the efforts of the General Assembly to follow up the report of the United Nations Fact-Finding Mission on the Gaza Conflict, also commonly referred to as the "Goldstone Report", in pursuit of accountability and justice for the violations of international humanitarian law and international human rights law perpetrated during the Israeli military operations in the Gaza Strip from December 2008 to January 2009.

Pursuant to the note of 27 May 2010, in which the Secretariat of the United Nations, on your behalf, requested the Permanent Observer Mission of Palestine to the United Nations to provide, with reference to General Assembly resolution 64/254 of 26 February 2010, entitled "Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict", written information regarding the steps that the Palestinian side may have taken, further to the urging of the Assembly in paragraph 3 of resolution 64/254 as well as in paragraph 4 of resolution 64/10 of 5 November 2009, I have the honour to transmit to you the following:

1. A letter, dated 11 July 2010, from President Mahmoud Abbas (see appendix I)

2. The report of the Palestinian Independent Commission Investigating in Follow-up of the Goldstone Report, including a general introduction to the report (see appendix II).

Pursuant to its mandate, the Palestinian Independent Commission has presented a comprehensive report, constituting an independent, credible investigation that is in conformity with international standards. This information is thus being submitted in compliance with General Assembly resolution 64/254, as requested by the Secretariat, in order to assist the Secretary-General in fulfilling his responsibilities under the said resolution, in which he was requested to report on the implementation of the resolution, with a view to the consideration of further action, if necessary, by the relevant United Nations organs and bodies, including the Security Council.

In this regard, as stressed by the General Assembly in resolution 64/254, Palestine reaffirms the need to ensure accountability for all violations of international humanitarian and human rights law in order to prevent impunity, ensure justice, deter further violations and promote peace. Palestine reaffirms its respect for international law and its commitment to upholding its obligations and responsibilities in this regard. At the same time, Palestine reiterates its urgent and constant appeals to the international community to uphold the rule of law and all of the legal and moral obligations towards the question of Palestine, including towards ensuring accountability and justice for the crimes perpetrated by Israel, the occupying Power, against the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, over the many decades of its belligerent military occupation.

In closing, we take the opportunity to reiterate the importance of achieving truth and justice, which are absolutely necessary for the fulfilment of our collective efforts to make peace a reality. In this regard, we reaffirm the conviction expressed repeatedly by the General Assembly, including in resolutions 64/10 and 64/254, that "achieving a just, lasting and comprehensive settlement of the question of Palestine, the core of the Arab-Israeli conflict, is imperative for the attainment of a comprehensive, just and lasting peace and stability in the Middle East".

(*Signed*) Riyad **Mansour**
Ambassador
Permanent Observer of Palestine to the United Nations

Attachment I to the letter dated 12 July 2010 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General

Letter dated 11 July 2010 from the President of the Palestinian National Authority to the Secretary-General

Ramallah, 11 July 2010

I have the honour to transmit to you the report of the Independent Investigation Commission established pursuant to the Presidential Decree of 25 January 2010, as called for by General Assembly resolution 64/254 concerning the second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict.

In that resolution, the General Assembly reiterated its urging for the conduct by the Palestinian side of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice.

The present report is also submitted in response to the letter of the United Nations Secretariat, dated 27 May 2010, requesting the Permanent Observer Mission of Palestine to the United Nations to submit in writing to the Secretary-General by 12 July 2010 information concerning the steps that have been or will be taken by the Palestinian side in response to the request contained in paragraph three of the above-mentioned General Assembly resolution.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Mahmoud **Abbas**
President of the State of Palestine
Chairman of the Executive Committee of the Palestine Liberation Organization
President of the Palestinian National Authority

Attachment II to the letter dated 12 July 2010 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General

General introduction to the report of the Palestinian Independent Investigation Commission established pursuant to the Goldstone Report

1. The present report is submitted by the Palestinian National Authority pursuant to General Assembly resolution 64/10 of 5 November 2009, entitled "Follow-up to the report of the Fact-Finding Mission on the Gaza Conflict" as well as General Assembly resolution 64/254 of 26 February 2010, entitled "Second Follow-up to the report of the Fact-Finding Mission on the Gaza Conflict". In those resolutions, the United Nations urged the Palestinian authorities to investigate the alleged serious violations of international humanitarian law and international human rights law documented in the report of the United Nations Fact-Finding Mission on the Gaza Conflict (also known as the "Goldstone report"), hereinafter referred to as the Fact-Finding Mission report. In this regard, it is to be recalled that the Fact-Finding Mission was established pursuant to Human Rights Council resolution S-9/1 to investigate the violations of international humanitarian law and international human rights law perpetrated by Israel, the occupying Power, against the Palestinian people, particularly on the Gaza Strip during the military operations that occurred from 27 December 2008 to 18 January 2009.

2. It is prepared by the Palestinian Independent Commission Investigating in Follow-up of the Goldstone Report, which was created pursuant to a Palestinian Presidential Decree issued on 25 January 2010 by President Mahmoud Abbas for the purpose of fulfilling the requirements of General Assembly resolution 64/10.

3. It commences with an examination of the Fact-Finding Mission's mandate, a brief survey of the historical context that led up to the Israeli military aggression against the Gaza Strip (self-entitled by Israel, the occupying Power, as "Operation Cast Lead"), a brief reference to the Fact-Finding Mission's report on the violations of international humanitarian law and international human rights law that occurred in that context, a discussion of some relevant legal considerations, and an extensive and detailed independent investigation into violations of international human rights law in the Occupied Palestinian Territory undertaken by the Palestinian Independent Commission. The report of the Palestinian Independent Commission follows the present introduction.

4. Firstly, the Palestinian Independent Commission wishes to commend all of the members of the Fact-Finding Mission for their professionalism, integrity and impartiality in undertaking their report, which will contribute to international efforts to combat impunity in conflicts and to ensure accountability and justice for violations of international humanitarian law and other international crimes committed against the Palestinian people, who continue to suffer from oppression, hardship and systematic human rights violations as well as war crimes, perpetrated by Israel, the occupying Power, in the context of its belligerent military occupation of the Palestinian Territory since 1967. The Palestinian Independent Commission also wishes to express its appreciation of the efforts exerted by the High Commissioner for Human Rights and the dedicated members of her Office in support of the Fact-Finding Mission, in accordance with resolution ES-9/1.

Scope of the report

5. In accordance with the recommendations of the Fact-Finding Mission, the General Assembly in resolution 64/10 urged "the undertaking by the Palestinian side, within a period of three months, of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice". This was reiterated by the Assembly in resolution 64/254.

6. This language stems from the broadened scope of the mandate of the Fact-Finding Mission, which, as articulated by the President of the Human Rights Council was to "investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period between 27 December 2008 and 18 January 2009".

7. The General Assembly thus urged "the Palestinian side" to undertake investigations into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission. The United Nations has recognized the Palestine Liberation Organization (PLO) as an observer to the Organization pursuant to General Assembly resolution 3237 (XXIX) of 22 November 1974, which is in keeping with the decision of the 1974 Arab Summit in Rabat which designated the PLO as the "sole legitimate representative of the Palestinian people". The Palestinian National Authority was established pursuant to the Declaration of Principles on Interim Self-Government Arrangements, signed between the PLO and the Government of Israel on 13 September 1993, known as the Oslo Accord. By virtue of this agreement and subsequent agreements, the Palestinian National Authority was accorded the legitimate right of governmental administration over the Occupied Palestinian Territory under Israeli control since the 1967 war. Therefore, it must be stressed that the official for the "Palestinian side" is the Palestinian National Authority, whose ultimate authority is the PLO.

Historical background

8. Following the declaration of independence by the State of Israel on 15 May 1948 and the outbreak of war between Israel and Egypt, Jordan, Syria, Lebanon and Iraq, Israel seized more territory than that which was allotted to it by the General Assembly in resolution 181 (II) of 29 November 1947, by which it partitioned Mandate Palestine, and hundreds of thousands of Palestinians were forcibly expelled or fled in fear from their homes, a tragic turning point in Palestinian history known as Al-Nakba. Following the 1948 war, the remaining territory of Mandate Palestine, namely the West Bank, including East Jerusalem, and the Gaza strip, came under the control and administration of, respectively, the Hashemite Kingdom of Jordan and Egypt. Egypt had not claimed sovereignty over the Gaza strip, but merely the right to exercise administration over it, pending its return to a prospective Palestinian state, and in 1969, King Hussein of Jordan renounced any claim of sovereignty over the West Bank and relinquished it to the Palestinian people, whose legitimate representative was recognized to be the PLO.

9. General Assembly resolution 273 (III) of 1949, which admitted the State of Israel to membership, recalled both resolution 181 (II), otherwise known as the partition resolution, and resolution 194 (III), which affirmed the right of Palestinian refugees to return to their original homes in Mandate Palestine. This resolution also took note of the declaration of the representative of Israel that affirmed the intention of his Government to respect those two resolutions. The

implication of referring to those two resolutions and to the declaration of the Israeli representative is that Israel's membership in the United Nations remains conditional on the implementation of those resolutions.

10. Following the 1967 war, Israel occupied the remaining areas of Palestine by forcibly seizing the West Bank, including East Jerusalem, and the Gaza Strip. This now 43-year foreign military occupation by Israel of the Palestinian and other Arab lands has been the subject of numerous Security Council and General Assembly resolutions, among the most important of which is Security Council resolution 242 of 22 November 1967, which emphasized the "inadmissibility of the acquisition of territory by war", and required the "withdrawal of Israeli armed forces from territories occupied in the recent conflict".

11. Despite the aforementioned resolutions, Israel continued to occupy the West Bank, including East Jerusalem, and the Gaza Strip (which constitute one geopolitical entity commonly referred to as the Occupied Palestinian Territory, and consistently and systematically violated international humanitarian law and international human rights law through policies and practices aimed at perpetuating its occupation and altering the demographic composition and map of the Occupied Palestinian Territory. As part of these policies, Israel unilaterally annexed occupied East Jerusalem in 1980, an unlawful annexation which is not recognized by the international community to this day, confiscated thousands of tracts of land owned by Palestinians, constructed hundreds of settlements, transferred thousands of Israeli settlers to the Occupied Palestinian Territory and built an elaborate and discriminatory system of "bypass routes" to connect these illegal settlements in a massive, illegal colonization campaign, which later also came to include the Wall that continues to be unlawfully constructed by Israel in the West Bank in deviation of the 1967 Green Line, in grave breach of international humanitarian law and in flagrant defiance of the 9 July 2004 advisory opinion of the International Court of Justice.

12. Following the commencement of the Middle East Process, beginning with the Madrid Peace Conference in 1991, based on the relevant Security Council resolutions and the principle of "land for peace", and the signing of the 1993 Oslo Accord, the PLO assumed limited responsibilities for governing certain areas of the Occupied Palestinian Territory for what was to be an interim period of five years until the conclusion of a comprehensive peace agreement. However, throughout the various stages of the peace process negotiations, Israel continued to confiscate more Palestinian lands and construct more settlements in an attempt to create a fait accompli, violating international law and demonstrating that Israel conducted negotiations in bad faith as it endeavoured to prejudice the outcome of final negotiations.

13. Following the failure of peace negotiations between Israel and the Palestinian National Authority and the outbreak of the Al-Aqsa Intifada on 28 September 2000, the Government of Israel, led by Prime Minister Ariel Sharon, declared that it would implement a unilateral disengagement plan that in effect endeavoured to impose upon the Palestinians Israel's vision for a settlement. An integral part of this disengagement plan was the dismantlement of Israeli settlements in Gaza and the redeployment of Israeli occupation troops to the areas bordering Gaza. Contrary to Israeli contentions that the disengagement plan and the redeployment of Israeli troops from Gaza ended the state occupation in that area, it is the position of the Palestinian National Authority, which the Palestinian Independent Commission endorses and adopts, that Gaza remains occupied territory and that Israel remains the occupying Power over that territory, with all the obligations appertaining thereto. The

occupation of the Gaza Strip is confirmed by Israel's continued exercise of effective control over the territory, which is manifested in a number of ways, including: (1) Israel's unilateral control of the airspace and territorial waters of Gaza, (2) Israel's continued military presence in the Philadelphi Corridor along the border between the Gaza Strip and Egypt, (3) Israel's continued control of all border crossings with Gaza, (4) Israel's continued military land incursions, and air and naval strikes against Gaza, and (5) Israel's insistence that the entry and exit of any persons or goods be with its consent.

14. The situation in the Gaza Strip further deteriorated with the taking over by the Islamic Resistance Movement (Hamas) of Palestinian National Authority institutions in Gaza on 12 June 2007, which was followed by Israel's declaration on 19 September 2007 that the Gaza Strip had become an "enemy entity", and its imposition on the territory of a land, air and naval blockade that constitutes a form of collective punishment of the Palestinian civilian population in the Gaza Strip, in flagrant violation of international law. Israel also intensified its policy of targeted assassinations of the political leadership in Gaza, which constitute a form of extrajudicial executions in violation of international humanitarian law and international human rights law. Moreover, Israel undermined the functioning of the Palestinian governmental structures by detaining many leading Palestinian figures, including members of the Palestinian Legislative Council.

15. Israel also periodically launched military operations and assaults against the Gaza Strip, at times allegedly in response to the firing by the Palestinian armed resistance groups of "crude rockets" into Israeli territory. These military operations usually entailed strikes from fighter aircraft, helicopter gunships and artillery barrages. Israel also occasionally carried out ground assaults against the Gaza strip, using tanks, armoured personnel carriers and heavily armed infantry, which caused civilian casualties and widespread destruction of homes and infrastructure.

16. In this regard, Israel has repeatedly claimed that its attacks on Gaza were necessitated on the grounds of self-defence because of the launching by Palestinian armed resistance groups of rockets and mortars against its territory and civilian population. It must be stressed that there are no verifiable or reliable estimates of the numbers of rocket launchings or mortar shelling, where they originated from, where they landed and what, if any, damage they caused, except with respect to certain deaths reported by Israel and consisting at the highest reported figure of 13 casualties over a period of four to five years (including three or four military personnel who would be considered valid military targets under international humanitarian law). The numbers publicly reported vary, depending on their sources. The Israeli Ministry of Foreign Affairs claimed that during the 2008 Palestinian resistance armed groups launched 1,750 rockets and fired 1,528 mortar projectiles, while the Israeli spokesperson reported the launch of 1,755 mortar projectiles, 1,720 Qassam rockets, and 75 Grad missiles. In another report, the Israeli spokesperson announced that 7,200 projectiles had been launched at Israel since 2005, without distinguishing the nature of the projectiles. Israeli Prime Minister Benjamin Netanyahu stated during an interview on the CNN "Larry King Live" talk show on 7 July 2010 that "6,000 rockets" had been launched against Israel, presumably during the same period of 2005-2009, which is the time frame of the Israeli report. It should be noted that none of these Israeli sources indicate where the purported fired projectiles landed. Thus, they could have landed in desert areas or in areas uninhabited by the civilian population, or in or around military areas (which could be deemed valid military targets under international humanitarian law).

17. The Fact-Finding Mission report cited Israeli sources claiming that 3,455 rockets and 3,742 mortar projectiles were fired at Israel from 2001 to mid-June 2008, without distinguishing where they landed. The Fact-Finding Mission could not verify any of the Israeli claims that are periodically announced in the media and that are cited in the Fact-Finding Mission's report, given the Israeli refusal to cooperate with the Fact-Finding Mission.

18. None of these estimated numbers have been independently and impartially verified and the Palestinian Independent Commission was not in a position to investigate the accuracy of any of these numbers and it could not address this question more fully in the present report. It would have been useful if Israel had established an independent fact-finding commission in order to ascertain the truth, instead of having unascertainable data bandied around to justify Israel's military aggression and repressive actions in Gaza and against its civilian population, particularly in connection with Operation Cast Lead.

19. Nothing in the above should be construed as indicating that the present report dismisses or makes light of the impact and consequences of rocket launching and mortar firing against a civilian population. The Palestinian National Authority has repeatedly and officially condemned rocket fire and called for its cessation. Nor does it deny the responsibility of those who may have deliberately targeted civilian populations. What the report highlights is the inaccuracy and unreliability of the data and the failure of Israel to investigate them in a fair and impartial manner.

20. Returning to the situation in Gaza prior to the Israeli military aggression launched on 27 December 2008, it should be recalled that Egypt had negotiated a six-month ceasefire between Hamas in Gaza and Israel, otherwise known as the "period of calm" or *tahde'a*. By late December 2008, however, discussions mediated by Egypt to renew the "period of calm" for six months had not been successful. Israel then launched a 23-day military offensive against the Gaza Strip, dubbed "Operation Cast Lead", which led, as reported by the Fact-Finding Mission, to the death of over 1,300 Palestinian civilians and the injury of over 6,000, many of them women and children.

Violations of international human rights law by the Palestinian National Authority and by those exercising authority in Gaza

21. The Palestinian Independent Commission responds with specificity to the claims by the Fact-Finding Mission of violations of international human rights law by the Palestinian National Authority and those in authority in Gaza, under the name of the Islamic Resistance Movement (Hamas), in the main part of the report.

The Palestinian legal system: history and heritage

22. Palestine has a longstanding legal system, which includes legal institutions and structures and a judiciary. The following is a brief description, which is purely of an introductory nature. The present legal system falls within the overall structure of the Palestinian National Authority as it has been structured following the conclusion of the Oslo Accords of 1993. The new governmental structure, however, has built upon its historic heritage, which involves law-making, a separate judiciary and an executive branch of government overseeing law enforcement and prosecution. The history of that legal system cannot be characterized as essentially indigenous because of the succession of external powers exercising authority over Palestine. This history can be retraced to the inclusion of Palestine in 637 C.E. as part of the Muslim *Ummah* (nation), whose successor was the Turkish Ottoman Empire as of the

15th century. The latter, which lasted until 1917, preserved the distinctive characteristics of the Palestinian administration. It was followed from 1922 with the establishment of the League of Nations mandate (with Britain as the Mandatory Power) until 1948, when Israel declared its independence and established a State on what amounted to more than half of the territory of Palestine. At that time the territory known as the West Bank, including East Jerusalem, came under the administration of the Hashemite Kingdom of Jordan and Gaza was under the administration of Egypt. During this period, the various administering powers enacted laws that were administered by a judicial system. Over the years, there has been an accumulation of laws, which must be assessed in the light of the contemporary needs of Palestinian society, including the codification of different areas of law. Many of these efforts are under way.

23. There are also many reforms currently under way in the Palestinian legal system and much progress has been made in the last few years, including with regard to greater emphasis on the protection and promotion of human rights, notwithstanding the difficult economic, social and political circumstances that continue to be confronted due to the Israeli military occupation and its myriad illegal policies and practices. This progress needs to be sustained with a view to strengthening the rule of law and enhancing the protection of human rights, as defined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Other human rights, norms and standards should also be strengthened, such as those contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Present efforts are in this direction, and it is in this spirit that the report of the Palestinian Independent Commission has focused on human rights violations, demonstrating in a fair and impartial manner its commitment to the rule of law in Palestine.

24. As shown in the report of the Palestinian Independent Commission (Arabic section), the situation in Gaza has been different ever since the takeover by Hamas. Legal institutions are being undermined and this has resulted in a high number of violations of international human rights law, negatively impacting the situation of human rights in Gaza. In accordance with the recommendations of the Fact-Finding Mission, the report of the Palestinian Independent Commission has focused on violations of international human rights law in both the West Bank and Gaza. This report, however, is not to be read as if they were a counterpart to the Israeli violations in Gaza during the period from 27 December 2008 to 18 January 2009 of international humanitarian law and international human rights law. These are two different questions which are not to be considered equivalent or counterbalancing each other. They are totally distinct and separate questions, and should be treated accordingly. The Palestinian Independent Commission emphasizes that there is no moral equivalency between Israeli violations of international humanitarian law and international human rights law in Gaza during the period from 27 December 2008 to 18 January 2009 and the situation concerning observance and respect for human rights in Gaza by Hamas and the different situation which exists in the West Bank.

25. The Palestinian Independent Commission is not in disagreement with the report of the Fact-Finding Mission on conditions with regard to international human rights law in Gaza. It does not, however, agree with some of the critical observations regarding the West Bank. The Palestinian Independent Commission has, however, found that there are international human rights law

violations and deficiencies in the West Bank, many of which are noted in the report of the Fact-Finding Mission. However, it notes that these violations and deficiencies are not due to the absence of laws and institutions but to the failure of these institutions to properly apply the law to all citizens in a fair and equal manner, which must also be viewed consistently in the light of the situation faced by the West Bank.

26. The Palestinian Independent Commission documents a number of these violations and deficiencies as a way of showing the fairness of its reporting as required by General Assembly resolution 64/10. Moreover, the Palestinian Independent Commission expects that its reporting on these violations and deficiencies, which the Palestinian National Authority has agreed to submit as part of its reporting to the United Nations, in compliance with the aforesaid resolution, will contribute to the improvement of the internal situation in the West Bank. While neither the Palestinian Independent Commission nor the Palestinian National Authority can at this time exercise any authority in Gaza, the Palestinian Independent Commission hopes that this report will also contribute to improving the human rights situation in that part of Palestine, until such time as the government can exercise national authority over all of the Occupied Palestinian Territory.

Legal considerations

27. The Government of Israel is a party to the four Geneva Conventions of 1949, but it has not acceded to their Additional Protocols I and II. The PLO submitted a declaration on 21 June 1989 to the Government of Switzerland to the effect that it considers itself bound by the Geneva Conventions of 1949. Both parties are, therefore, bound by the Geneva Conventions, and that portion of the additional protocols that falls within the meaning of customary international law. There is no question that, under both the Geneva Conventions and customary international law, attacks upon civilian populations or civilian targets, and indiscriminate and disproportionate use of force constitute a war crime in cases of conflict of an international character. Similarly, belligerent reprisals fall within the same prohibition.

28. While the Government of Israel has taken the position that it does not consider that the Fourth Geneva Convention of 1949 is applicable to the West Band and Gaza, it has been firmly established that the Fourth Geneva Convention is applicable to the Occupied Palestinian Territory, including East Jerusalem. This has been reaffirmed in dozens of Security Council resolutions, as well as annually in numerous General Assembly resolutions. Moreover, this was clearly affirmed in the Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory, which clarified that the intent of the drafters of the Convention was "to protect civilians who find themselves, in whatever way, in the hands of the occupying Power" and which also affirmed the applicability of the human rights covenants to the Occupied Palestinian Territory, including East Jerusalem. Israel has, nevertheless, acknowledged that the provisions of the Fourth Geneva Convention are binding upon it. In addition, several General Assembly resolutions, including of its tenth emergency special session, have directly called on the High Contracting Parties to the Fourth Geneva Convention to uphold their legal obligation under common article 1 of the Geneva Conventions to respect and ensure respect of the Convention in the Occupied Palestinian Territory, including East Jerusalem, which was also reflected in the Advisory Opinion of the International Court of Justice and constituted a significant recommendation of the Fact-Finding Mission, reflected

in the calls made in this regard by the Assembly in resolutions 64/10 and 64/254.

29. It should also be noted that Protocol I gives people "fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination" the protections applicable in an international armed conflict. Assuming the applicability of Protocol I to the Palestine resistance movement against the continued Israeli occupation of the territories occupied by force after the 1967 war in violation of resolutions 242 and 338, any violations of international humanitarian law by any of the parties would be subject to the grave breaches provision of Protocol I and the Fourth Geneva Convention.

30. Furthermore, the Sharia specifically prohibits these and other transgressions in the conduct of war. In fact, the Islamic law prohibitions against these violations long preceded contemporary international humanitarian law. The protection of civilians originated with the Prophet Mohammed (Peace be upon Him) giving instructions in 630 CE to the Muslims conquering Mecca. This was followed specifically in 634 CE by the first khalifa of Islam, Abu Bakr alsidiqque, giving instructions to the Muslim army going to fight the Roman Empire, in what is now Syria. He stated in those instructions "do not commit treachery, nor depart from the right path, you must not mutilate, nor kill a child or aged man or woman. Do not destroy a palm tree nor burn it with fire, and do not cut any fruitful tree. You must not slay any of the flock or the herds of camels [of your enemy], save for [what is needed] for your subsistence. You are likely to pass by people who have devoted their lives to monastic services, leave them to that which they have devoted their lives to [protection of religious persons]."

31. It is a fundamental principle of the Sharia, as it applies to limitations on the means and methods of warfare, to reduce unnecessary or excessive pain and suffering in a way that is presently reflected in the principles of customary and conventional international humanitarian law.

State of implementation of the recommendations contained in the report of the Fact-Finding Mission

32. In this section, the present report will examine the extent to which the recommendations of the Fact-Finding Mission were implemented. The Palestinian Independent Commission has found it appropriate to examine a selection of recommendations that were addressed to Israel, the Palestinian National Authority, Palestinian armed resistance groups in Gaza and the Security Council. These include lifting the Israeli blockade against Gaza, lifting the restrictions on freedom of movement within the Occupied Palestinian Territory, including between the West Bank and the Gaza Strip, the ceasing of Israeli restrictions on the fishing and agricultural industries in Gaza, and the release of all Palestinians detained by Israel, including Palestinian political leaders. The present report also discusses the implementation of recommendations directed to the Palestinian National Authority to investigate allegations of mistreatment of members of Hamas in the West Bank, and the recommendation to release Israeli Corporal Gilad Shalit. The report also discusses, at length, the recommendation directed to the Palestinian armed resistance groups to respect and uphold international humanitarian law and international human rights law.

The lifting of the Israeli blockade of the Gaza Strip; the ceasing of border closures and restrictions on passage of persons and goods through border crossings with the Gaza Strip and the imperative of allowing the passage of goods and supplies necessary and sufficient to meet the needs of the civilian population

33. This recommendation concerns a variety of measures taken by the Government of Israel under the guise of security measures, consisting of closures of border crossings, restrictions on individual passage across those border crossings, as well as restrictions on the passage of humanitarian assistance and goods necessary and sufficient to meet the needs of the population, undeniably constituting a blockade of the Gaza Strip, as repeatedly acknowledged by the Government of Israel and Israeli officials themselves. The individual and cumulative measures comprising this policy and its deleterious impact on all sectors and aspects of Palestinian life constitute collective punishment of a massive scope and scale, in grave violation of international humanitarian law and international human rights law, and they also rise to the level of crimes against humanity. Israel has yet to explain why it has engaged in this unlawful policy, offering only empty and unjustifiable ruses, and why it continues to carry it out notwithstanding its proven negative effect on the health and socio-economic, humanitarian, psychological and political well-being of the Palestinian people in Gaza. Moreover, Israel has yet to explain why those in command, whether civilian or military, who have established this policy and carried it out have not been held accountable. On the contrary, Israel has continued to make claims of justification based on so-called security considerations, without demonstrating what the real threats are in relationship to the harm that it has deliberately inflicted on the Palestinians. Moreover, such harm, which appears to be a policy of retaliation, is in the nature of reprisals conducted on a widespread and systematic basis against the civilian population, in violation of international humanitarian law and international human rights law.

34. As the Fact-Finding Mission notes in its report, the Israeli policy of blockading Gaza predates the military operations that commenced on 27 December 2008. This policy was intensified after the takeover of Palestinian National Authority institutions in Gaza by Hamas on 12 June 2007.

35. The underlying purpose of this policy was to remove the Hamas authorities from power, by placing Israeli economic, social and, on many occasions, military pressure on the Palestinian civilian population. This policy is a form of collective punishment that is prohibited by both customary and conventional international humanitarian law. The Israeli blockade of Gaza also precipitated an immensely adverse effect on the lives of the civilian population. By all accounts, Palestinians in Gaza witnessed a devastating decline in their standard of living. For example, according to both the Food and Agriculture Organization of the United Nations and the World Food Programme, 76 per cent of households in Gaza suffer from food insecurity, while the Office for the Coordination of Humanitarian Affairs of the United Nations found that Palestinians in Gaza suffered from up to 8-12 hours of electricity cuts daily. Moreover, the World Health Organization reported that the Israeli military operations severely eroded what was an already precarious health situation in Gaza. Furthermore, according to the Office for the Coordination of Humanitarian Affairs, 20 per cent of Gaza's workforce was unemployed in the first quarter of 2009, and 70 per cent of families were already living on an income of less than one dollar a day per person as of May 2008.

36. Palestinian Independent Commission affirms that this policy of collective punishment, which led to the systematic destruction of all facets of life in Gaza, represents a serious violation of both international humanitarian law and international human rights law. Furthermore, the Palestinian Independent Commission believes that the political situation in Gaza and the de facto control of Hamas does not legitimize the Israeli policy of collective punishment of the Palestinian people, which has been unanimously condemned by the international community.

37. Since receiving the recommendations contained in the report of the Fact-Finding Mission, Israel has not complied with the calls to lift the blockade and to cease the closing of border crossings with Gaza and to allow for the crossing of humanitarian assistance and other supplies and materials needed for the restoration of the standard of living in Gaza to its status quo ante including by allowing for the unfettered entry of goods that are essential for both the reconstruction and rehabilitation of Gaza following the Israeli military aggression in December 2008 and January 2009 and the disastrous impact of the blockade for meeting the daily subsistence needs of the Palestinian civilian population. The latest such incident in Israel's blockade of humanitarian assistance to Gaza occurred on 31 May 2010 when Israel attacked the "Gaza Freedom Flotilla" as it attempted to ship humanitarian aid to the Palestinian population in Gaza, an attack that resulted in the killing by Israel of nine Turkish civilians aboard one of the ships in the flotilla.

38. Israel has, however, recently announced that it intends to change this policy. The Palestinian Independent Commission takes note of this announcement. In the meantime, the United Nations and the international community at large should continue to consistently demand that Israel lift its blockade of Gaza and allow for the sustained and regular passage of essential foodstuffs, medication, building and reconstruction materials, educational supplies and fuel, as well as commercial flows necessary for economic recovery.

39. Furthermore, with respect to accountability, the Palestinian Independent Commission concurs with the views of the Fact-Finding Mission and many other sources that this form of collective punishment is a violation of international humanitarian law and international human rights law, and that, in connection with international humanitarian law, those who have established this policy should be held criminally accountable, pursuant to the grave breaches provisions of the Fourth Geneva Convention of 1949 and as a war crime under customary international law.

40. Moreover, such conduct, targeting a civilian population of that magnitude and for that duration, constitutes a crime against humanity as defined in customary international law and by the International Criminal Court. Similar conclusions were arrived at in the statutes of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

41. The Israeli reports of July 2009 entitled "The operation in Gaza: factual and legal aspects" and of January 2010 entitled "Gaza operation investigations: an update" do not address this question, which is an example of the selectivity of both these reports and of Israeli investigations into possible violations of international humanitarian law and international human rights law perpetrated by the occupying forces. These and other official Israeli reports seem designed not as investigations into the conduct of the Israeli armed forces or to verify possible violations of international law, but rather as an endeavour to legitimize the conduct of Israel's occupying forces.

The termination of restrictions on access to the sea for fishing purposes and allowing the resumption of agricultural activities

42. The Gaza coast on the Mediterranean Sea is 44 km long, stretching from the northern border with Israel to the international border with Egypt. The Oslo Accords allowed Palestinian fishermen to fish in waters up to 20 nautical miles from the Gaza shore. Following the outbreak of the Aqsa Intifada in occupied East Jerusalem on 28 September 2000, Israel unilaterally reduced this zone to 12 nautical miles and also designated a "closed security area", dubbed KI, with a breadth of 1.5 nautical miles from the Israeli border and a similar area, dubbed MI, with a breadth of 1 nautical mile from the Egyptian border. Following the latest Israeli military operations against Gaza, Israel further reduced the fishing zone to 3 nautical miles, which effectively reduced the total fishing area to 1,300 km^2. The result of this policy was the reduction of total annual output of the once flourishing Gaza fishing industry from 3,788 tons in 1997 and to 1,800 tons in 2009, a reduction of nearly 60 per cent.

43. This limitation directly affected the food supply of the 1.5 million Palestinians in Gaza which, combined with other limitation of food supplies discussed elsewhere in the present report, has had a significant and deleterious effect on the health and well-being of the civilian population, including in particular children and women, in violation of international humanitarian law and international human rights law.

44. To date, Israel has not complied with this recommendation of the Fact-Finding Mission report. The Palestinian Independent Commission affirms that the fishing industry is one of the important mainstays of the economy of Gaza and provides sustenance to many Palestinian families. Therefore, the continued restrictions placed by Israel against fishing in Gaza continue to constitute a serious violation of international human rights law.

45. Like the fisheries sector, agriculture in Gaza has been especially damaged by Israeli policies and practices. A primary reason for the deterioration of agricultural production in Gaza is that over 25 per cent of agricultural land is situated in areas bordering Israel, which meant that these areas were used by the Israeli occupying forces as the primary theatre for military operations during Operation Cast Lead. Indeed, these areas witnessed the dropping of around 75 per cent of all ordinances launched by the occupying Power against Gaza during the military operations that started on 27 December 2008.

46. The continued siege of Gaza has negated every effort to rehabilitate the once profitable agricultural sector in Gaza, contributed to the high levels of unemployment among Palestinians and had an immensely negative impact on incomes and standards of living. Israel has failed to implement the recommendations of the Fact-Finding Mission in this regard and continues, through the blockade and its recurrent military incursions into Gaza, to impede the rehabilitation of the agricultural sector in Gaza, with implications for the overall economy of Gaza, including the social and economic impact that this policy has on the civilian population.

47. It should be noted that, over the past few years, laudable efforts have been made by a number of organizations to rehabilitate the agricultural sector in Gaza. These efforts included the initiative of former World Bank President James Wolfensohn to secure the requisite financial resources for the purchase of greenhouses constructed by former Israeli settlers in Gaza, which were turned over to the Palestinians after Israel's 2005 so-called disengagement from Gaza during Ariel Sharon's premiership. The Palestinians successfully used these greenhouses and developed produce intended for export. These products,

however, had to pass screening by the Israeli security authorities before being allowed out of Gaza. Repeatedly, Israel has prevented the passage of these agricultural products, causing them to rot and thus causing serious economic harm to the Gaza economy, as well as to the economic survival of these agricultural projects.

48. Considering the repeated instances of this unlawful practice and their cumulative effect, they can only be viewed as constituting part of the overall collective punishment policy reflected in this and other measures, such as the limitation on fishing and the prevention of the passage of imports and exports to and from Gaza.

Allow freedom of movement for Palestinians within the Occupied Palestinian Territory — within the West Bank, including East Jerusalem, and between the Gaza Strip and the West Bank — and between the Occupied Palestinian Territory and the outside world

49. An integral aspect of the Israeli blockade of Gaza is denying freedom of movement to Palestinians both within the West Bank and Gaza, and between these areas of the Occupied Palestinian Territory. This is a policy which has, essentially, been in place since the occupation of the West Bank and Gaza in 1967, and has been implemented at different times with various levels of intensity. Following the commencement of the Middle East peace process in 1991 and the conclusion of the Oslo Accords in 1993 and subsequent agreements, freedom of movement improved as limited areas of the West Bank and Gaza returned to Palestinian control. With the outbreak of the Al-Aqsa Intifada in September 2000, Israel reoccupied many of the areas assigned to the PNA according to agreements signed by the Government of Israel with the PLO and the PNA. Since then, Israel has systematically hindered freedom of movement throughout the Palestinian territories, in violation of its obligations under international humanitarian law and international human rights law as the occupying Power.

50. Since the unilateral disengagement of Israel from the Gaza Strip in 2005, the Government of Israel has continued to hamper communication and movement between the West Bank and Gaza through control of the border crossings. This is best reflected in the following statistics, which show the number of days that the various border crossings between Gaza and Israel have been closed.

Crossing point	*2006*	*2007*	*2008*
Erez	159 days	57 days	18 days
Karni	54 days	349 days	225 days
Sufa	75 days	203 days	209 days
Kerem Shalom	127 days	251 days	220 days

51. Since the military aggression of 27 December 2008-18 January 2009, Israel has continued its policy of violating the Palestinian right of movement between the West Bank and Gaza, which is a serious violation of both international humanitarian law and international human rights law, and also contravenes the agreements concluded between the PNA and Israel throughout the peace process.

52. This practice must be viewed in the light of all of its deleterious effects on the economies of the West Bank and Gaza, as well as its harmful and traumatic

effects on the social fabric and on the basic humanitarian and psychological conditions of Palestinian society. The purpose of this policy is to isolate the West Bank and Gaza and to facilitate Israel's ability to impose other oppressive restrictions on each of these areas of the Occupied Palestinian Territory, with harmful effects on the lives and well-being of their respective populations. This policy and its application must also be viewed in the context of the other policies and practices mentioned above, all of which are cumulatively and intentionally designed to inflict collective punishment on the Palestinian people, in direct and grave violation of international humanitarian law and international human rights law.

The release of Palestinian civilians who are arbitrarily detained or imprisoned in Israeli jails and detention centres in connection with the occupation — the release of children should be an utmost priority, and the ceasing of the inhumane, degrading and discriminatory treatment of Palestinian prisoners and detainees; the cessation of interference with national political processes in the Occupied Palestinian Territory and, as a first step, the release of all members of the Palestinian Legislative Council currently in detention, and allowing the movement of all members of the Council between Gaza and the West Bank is also essential

53. Since the occupation of the Palestinian Territory in 1967, Israel has illegally detained and imprisoned a total of almost 800,000 Palestinians, in violation of international law, and denied the Palestinian population their rights pursuant to the International Covenant on Civil and Political Rights and other standards of international human rights law. Of those detainees and prisoners, 70,000 have been arrested in the period since the outbreak of the second intifada in 2000. Of that number, 8,200 remain in Israeli prisons and detention centres, 2,600 are being held without trial in violation of the International Covenant on Civil and Political Rights and other human rights standards and norms, and under deplorable conditions.

54. Furthermore, many of these Palestinian detainees and prisoners are exposed to various forms of degrading and inhumane treatment, including physical and mental abuse, harassment and humiliation, amounting in many cases to torture, which violates, inter alia, article 7 of the International Covenant on Civil and Political Rights. Israel has not taken the appropriate steps to investigate the many documented reports of brutality by its security services and to hold the perpetrators of those violations of international human rights law accountable.

55. More egregiously, Israel continues to keep over 370 children below the age of 16 in detention, some of them as young as 12 years of age, in violation of the Convention on the Rights of the Child, and nearly 100 women who are also exposed to all forms of ill-treatment.

56. In this connection, it is highly regrettable that the Government of Israel has remained wholly intransigent during negotiations undertaken through Egyptian mediation to secure the release of a large number of Palestinian detainees in return for the release of Israeli Corporal Gilad Shalit, who is being held by Palestinian resistance forces in Gaza. Israel's attitude during these negotiations is a cause of considerable concern for the PIC because the Government of Israel allows political considerations to direct these negotiations without regard for the human cost of the continued detention and imprisonment of thousands of Palestinian civilians in violation of international human rights law and international humanitarian law. The PIC also reaffirms that, even if an agreement is reached on the release of Palestinian detainees in return for

Corporal Shalit, Israel remains bound under international humanitarian law and international human rights law to release all remaining detainees and prisoners who have not been fairly tried in accordance with international human rights law and found guilty of a criminal offence.

57. Moreover, Israel continues to hold numerous figures of the Palestinian political leadership, including members of the elected Palestinian Legislative Council. This represents a violation of international human rights law, and of the obligations of the State of Israel pursuant to the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip signed on 13 September 1995. This policy also places further impediments before the ongoing efforts to achieve a just and comprehensive solution to the Palestinian-Israeli conflict. As long as the political leadership of the Palestinian people is not accorded its rights under international human rights law and is not treated with dignity and fairness, trust will continue to be undermined and peace negotiations will continue to face serious obstacles.

58. Israel has also failed to comply with the recommendations of the Fact-Finding Mission pertaining to facilitating the movement of Palestinian public figures, including politicians and members of the Palestinian Legislative Council between the West Bank and Gaza. This has seriously debilitated the work of the Council and hampered the functioning of other Palestinian governmental institutions. More critically, this policy is part of the greater Israeli strategy of creating a rift between the Palestinian communities in the West Bank and Gaza, which also has negative consequences for peace efforts. This policy is yet another manifestation of Israel's collective punishment of the Palestinian people, in violation of international humanitarian law and international human rights law, and represents a further hurdle facing a peaceful resolution of the conflict.

59. The official Israeli reports pertaining to the military operations in Gaza during the period 27 December 2008-18 January 2009 have ignored these matters and disregarded examination of the harmful impacts of such unlawful and aggressive Israeli policies on the Palestinian people and on the prospects for peace in the region.

Palestinian armed resistance groups who hold Israeli solider Gilad Shalit in detention should release him on humanitarian grounds; pending such release they should recognize his status as prisoner of war, treat him as such, and allow him ICRC visits

60. The PIC took note of the recommendation contained in the Fact-Finding Mission report that Israeli Corporal Gilad Shalit should be released on humanitarian grounds. The commission charged with preparing the present report was not in a position to meet Corporal Shalit or to ascertain that he was being held in conformity with the principles of international humanitarian law. The PIC, however, affirms that Corporal Shalit is an active serviceman with the Israeli occupying forces and, thus, is a combatant within the meaning of the Third Geneva Convention of 1949, which means that his detention is not in contravention of international law. The PIC agrees with the Fact-Finding Mission report that Corporal Shalit qualifies for the status of prisoner of war in accordance with the Third Geneva Convention of 1949, and should be treated as such. The PIC further agrees with the Fact-Finding Mission report that Corporal Shalit should be released on humanitarian grounds, but adds that such release should be part of an exchange agreement for the release of Palestinian detainees and prisoners being held by Israel, the occupying Power. In this regard, Israel should be compelled to approach these negotiations in good faith

and to ameliorate the suffering of Palestinian detainees and their families, instead of allowing these negotiations to be governed solely by unilateral Israeli political considerations. At the same time, the rights of all the Palestinian civilians being arbitrarily detained and imprisoned by Israel must be fully respected and the demands for their humane treatment by Israel, in accordance with international humanitarian law and international human rights law, and for their release must be unrelenting.

The Palestinian Authority should issue clear instructions to security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments, ensure prompt and independent investigation of all allegations of serious human rights violations by security forces under its control, and end resort to military justice to deal with cases involving civilians

61. As discussed in the Arabic part of the present report, the PIC has fully complied with this recommendation by the Fact-Finding Mission. The PIC issued numerous public calls in the various media outlets in the Occupied Palestinian Territory, including the newspapers and television stations, to invite any person alleging to have been the victim of human rights violations by PNA officials to present their complaints to the PIC. These public calls were not limited to the West Bank: attempts were also made by the PIC to extend this outreach to the Palestinian civilian population in Gaza through various media outlets there. The PIC did not, however, receive any response from media outlets operating in Gaza.

62. To reinforce the independence and integrity of its investigations, the PIC also held numerous meetings with human rights activists and members of non-governmental organizations active in the field of human rights in the West Bank. Furthermore, the PIC held a video conference session with human rights activists from Gaza, to receive information about human rights violations that may have been committed by the authorities there.

63. During the period 4-6 May 2010, the PIC held confidential meetings with all persons who had presented complaints alleging that they had been victims of human rights violations committed by PNA officials in the West Bank. This was followed by a similar session during the period 16-18 May 2010 to meet with persons alleging that they had been victims of human rights violations in Gaza. Among other things, however, the PIC was unable to ascertain whether the Hamas authorities had undertaken any investigations into alleged violations of human rights against individuals, members of the Fatah organization or otherwise. The PIC also met on 20 May with representatives of numerous Palestinian non-governmental organizations from the West Bank to receive their views on the human rights situation in the West Bank.

Palestinian armed resistance groups should undertake forthwith to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects

64. As already noted, the Palestinian Independent Commission was created pursuant to a Palestinian National Authority Presidential decree. However, the Palestinian National Authority has been unable to exercise effective control of Gaza since the taking over of power by Hamas. Despite its independence, the Palestinian Independent Commission was unable to secure the cooperation of Hamas and was thus unable to undertake any investigations in Gaza into the use of "crude rockets" by any of the armed resistance groups.

65. Nonetheless, the PIC affirms that, should it be acknowledged that the armed resistance groups in Gaza did intentionally target Israeli civilians, then such a practice would undoubtedly represent a violation of international humanitarian law. The PNA has on many occasions condemned rocket firing and called on armed resistance groups in Gaza to respect international law and to exercise their right to self-defence in a manner that ensures that the Palestinian people maintain their moral high ground and does not harm their national cause and interests. It is the position of the PIC to reaffirm the basic premise of the present report that international humanitarian law prohibits reprisals in times of armed conflict. Consequently, any claim of reprisals, whether by the Government of Israel or the Palestinian armed resistance groups, is hereby rejected.

66. In this regard, it is factually established that, during the period from 27 December 2008 to 18 January 2009, a number of rockets and mortar projectiles fired by Gaza armed resistance groups fell in Israel, causing the alleged death of three Israeli civilians and the alleged destruction of some civilian property of an undisclosed nature and extent.

67. The Fact-Finding Mission has not been able to verify these allegations. The present report does not challenge or confirm these facts because the PIC has not been in a position to verify them. However, for the purposes of the present report, the PIC admits to the facts presented by the Fact-Finding Mission in its report, to the effect that three persons were killed and that some civilian properties in southern Israel were damaged.

68. It is, however, important to understand that one of the salient features characterizing the dynamics between the Palestinian armed resistance groups in Gaza and the Government of Israel is their extremely asymmetric nature. The enormous disparity in military capabilities between the two sides is self - evident and need not be repeated. The Palestinian resistance's capability to respond to Israel's full arsenal of weaponry, including fighter airplanes, helicopter gunships, tanks and artillery, as well as substantial ground forces, is limited to sporadic "crude rocket" firing and mortar shelling. Yet it is also imperative to recall that this is a situation of an occupying Power versus an occupied people, who constitute a defenceless civilian population entitled to protection under international law.

69. If and when civilian targets or populations have been affected by such "crude rocket" firing, it was essentially because of the crude nature of the weapon and the inability to control where the fired projectile lands. While this is in no way intended to justify any harm caused to innocent civilians, it cannot be considered a violation of international humanitarian law, per se. Furthermore, each alleged incident of harm to civilian persons or civilian property would have to be investigated on an individual basis, and the Palestinian Independent Commission is not in a position to do so without the cooperation of both the Government of Israel and the armed resistance groups in Gaza.

70. Nevertheless, and as a matter of principle, international humanitarian law recognizes a right of compensation for property damage and for those who have been victimized by such attacks — a position which the Palestinian Independent Commission advocates, especially if undertaken as part of an agreement under which both sides compensate respectively the Palestinian and Israeli victims of the military operations that occurred during the period from 27 December 2008 to 18 January 2009.

Concluding remarks on the implementation of the recommendations of the Fact-Finding Mission report

71. It should be noted that the comments and answers furnished by the Government of Israel to the recommendations of the Fact-Finding Mission report and to the concerns expressed by other States, intergovernmental organizations, non-governmental organizations and civil society have invariably been justificatory of the military aggression perpetrated against Gaza on the basis of alleged security concerns. Israel has never addressed the legality and overall effect of all the repressive and collective punishment measures, policies and practices it implements in the Occupied Palestinian Territory and against the Palestinian civilian population. Instead, Israel has sought to compartmentalize these various practices and present justification for singular restrictive, aggressive and destructive actions, without regard to their legal social, economic, humanitarian and political impact. Surely an independent and fair investigation of these cumulative practices would reveal a policy of intentional collective punishment by means of all these different measures. Israel has never undertaken a thorough and fair assessment of the cumulative effect of its repressive practices and policies. This is for the obvious reason that it would not only expose this repressive policy of the occupying Power, but would also expose the architects and the senior executors of these policies and practices to criminal responsibility for war crimes and crimes against humanity.

72. Israel's common responses to the serious concerns repeatedly expressed by the international community about the perpetration of violations of international humanitarian law and international human rights law by its occupying forces over the decades is to point to a limited number of suicide bombings and a limited number of "crude rockets" producing limited harmful effect and to repeatedly attempt to distort and mischaracterize the conflict as a so-called "war on terror". With respect to the latter, it must be emphasized that the allegation of the Government of Israel is that, in four years, 13 people have been killed by these crude rocket attacks from Gaza, of whom four were military personnel, thus limiting the overall harm suffered by Israel to nine civilians killed during that period.

73. This response fails to display any concern towards the number of victims caused by Israel's military attacks and reprisals, collective punishment and colonization policies and measures, all of which constitute serious violations, many amounting to grave breaches, of international humanitarian law and international human rights law. Israel has never addressed its responsibility in connection with its policies and practices on the subject; instead it has tried to shift the blame onto the Palestinians, and in particular Hamas. Israel also endeavours to create the distorted impression that the Palestinians, and in particular, Hamas, are a people dedicated to terrorism against Israel. The Palestinian people, and for that matter people of goodwill all over the world, ask themselves the question why the killing by Hamas of nine Israeli civilians as a result of "crude rocket" firing over a period of four years deserves worldwide condemnation, while at the same time the killing of over 1,300 Palestinian civilians (including over 300 children and 100 women) and the injuring of almost 6,000 Palestinians within a period of almost four weeks and the collective punishment of 1.5 million civilians as described above can be treated with benign neglect or categorized as "collateral damage" of the conflict. The Palestinian Independent Commission reiterates that the perpetrators of these crimes against the Palestinian people must be accountable in accordance with international law.

The role of civil society in identifying Israeli violations of international humanitarian law and international human rights law

74. The Palestinian Independent Commission notes that a number of human rights organizations, including Amnesty International and Human Rights Watch, and more particularly Palestinian and Israeli human rights non-governmental organizations, such as B'Tselem, Al Haq, the Al Mezan Center for Human Rights and the Palestinian Centre for Human Rights, have consistently identified violations of international humanitarian law and international human rights law committed by the Government of Israel and its occupying forces with complete impunity. The Palestinian Independent Commission takes this opportunity to acknowledge with gratitude these and other human rights organizations and advocacy groups, as well as many in the media throughout the world who have focused attention on the egregious violations being committed by Israel, the occupying Power, against Palestinian people. These independent sources add support to the report of the Fact-Finding Mission and to the findings and conclusions contained in the present report.

Accountability

75. According to General Assembly resolution 64/10, the investigations to be undertaken by both the Israeli and Palestinian sides are to contribute "towards ensuring accountability and justice".

76. Accountability requires the establishment of truth, which is what the Fact-Finding Mission sought to do. The request of the General Assembly to the Israeli and Palestinian authorities to carry out their respective investigations is intended to advance the goal of the truth. Regrettably, the reports issued by the Government of Israel to date do not do so. Instead, those reports seem intended to provide justifications of a dubious nature concerning specific attacks committed by the Israeli occupying forces in Gaza during the period from 27 December 2008 to 18 January 2009. Such reports do not advance the purpose of truth and justice, do not advance the objective of accountability, do not help to bring an end to impunity and do not advance the goals of reconciliation and peace.

77. Those found to have ordered and committed serious violations of international humanitarian law, and more specifically those incidents that amount to war crimes and crimes against humanity, should be held accountable in the appropriate legal systems, and that includes both the military and political leadership who have either used their command authority to order these violations or have failed to prevent them once they discovered their perpetration, and those who failed to prosecute and punish those who committed them.

78. In this regard, the Palestinian Independent Commission takes note of the announcement on 6 July 2010 by the Israeli Military Advocate General that investigations into four incidents that took place during Operation Cast Lead have led to the taking of action against at least four personnel in the Israeli occupying forces. While this is a relevant development, the Palestinian Independent Commission urges Israel to comply with the calls by the international community to carry out a truly independent, credible investigation in conformity with international standards, as called for by the Fact-Finding Mission and the General Assembly. Israel should open full investigations into the many more cases of violations of international humanitarian law and international human rights law that were recorded both in the Fact-Finding Mission report and the numerous reports of non-governmental and relief organizations, which have consistently reaffirmed the perpetration of serious

human rights violations and grave breaches of international humanitarian law by the Israeli occupying forces against Palestinian civilian population, particularly in the Gaza Strip from December 2008 to January 2009. The Palestinian Independent Commission hopes that such an independent Israeli investigation will lead to holding accountable all those that have planned, ordered and committed violations of international humanitarian law or international human rights law during Operation Cast Lead. In such steps, the modalities of reparation and compensation that Israel, the occupying Power, is obligated to make to the victims of violations and their families must also be considered.

Concluding remarks and observations

79. The Palestinian Independent Commission is cognizant of the reality that every Government must balance between the needs for security and the protection of human rights. This balancing process must be undertaken on the basis of the established principles of international law, particularly the protections and prohibitions enshrined in international humanitarian law and international human rights law, and the realization that some human rights are non-derogable, especially the right to life and protection against torture, cruel, inhuman and degrading punishment or treatment.

80. The Government of Israel has all too often sought to legitimize and justify such gross violations perpetrated by its occupying forces by presenting claims of security. Seldom, however, has it convincingly presented any basis in international law for such violations or truly established the causal connection between its repressive actions and the enhancement of security for its own population. Instead, it has shown a tendency towards blatant impunity and disregard for international law, as well as justification of its indiscriminate, disproportionate and collective punishment measures against the Palestinian people, as if no limitations applied to Israel, irrespective of whether they arise under international humanitarian law and international human rights law. All such actions contravene and breach Israel's obligations under international law as an occupying Power and as a Member State of the international community of nations under the Charter of the United Nations.

81. Such Israeli impunity is rooted in self-bestowed and internationally fostered exceptionalism over the decades that disregards and abrogates all relevant provisions of international law and relevant United Nations resolutions, not only resulting in systematic and grave violations of international humanitarian law and international human rights law, but also constituting the core and most challenging impediment to reaching a just and lasting peace settlement between Israel and Palestine. Considering that a prospective peace requires justice and peaceful coexistence and cooperation between the two peoples, it is indispensable for the Government of Israel to change its approach of repressive and collective punishment to one of respect for and observance of the rights of the Palestinian people, who tragically continue to suffer under its military occupation.

82. International humanitarian law and international human rights law reflect and represent the commonly shared values of humankind. The international community has committed itself to the respect and observance of those values and those specific norms contained in international conventions, covenants, statues and treaties as well as those that are reflected in customary international law. Provision for their enforcement has been included in a variety of treaty mechanisms, which can be equated in terms of domestic law to administrative and civil measures and which have, in fact, been incorporated in the national

legislation of many countries. Many of the violations of these values and norms have been addressed in international criminal law, which has criminalized a number of violations, including those contained within the meaning of war crimes, genocide, crimes against humanity and torture. These protections and the criminalization of their denial apply without discrimination to all human beings, and no State can claim exception.

83. Admittedly, three Israeli civilians were killed during the period from 27 December 2008 to 18 January 2009 by misguided "crude rockets" fired by the armed resistance groups in Gaza, and that cannot be justified even though it was not intended. At the same time, over 1,300 Palestinian civilians (including over 300 children and 100 women) were killed in Gaza during the Israeli military aggression, while over 6,000 civilians were injured, many severely and permanently, and thousands of civilians were displaced, their homes and communities reduced to rubble by the Israeli aggression and remaining in that state because of the punitive and illegal blockade Israel continues to impose on the traumatized Palestinian civilian population. The comparison between these numbers is shocking to the conscience of any people. And yet, the Palestinian Independent Commission acknowledges that it is well established in both Judaism and Islam that preventing the death of even one human being is sacrosanct.

84. Sadly, the Government of Israel's reports prepared in response to the request of the General Assembly show how extensive its efforts have been to present spurious, ill-founded and overstretched attempts, barely based on the norms and rules of international law, to explain why it used indiscriminate and excessive force against the Palestinian civilian population, causing the unprecedented harm very briefly described above. There is not a single incident among the hundreds of incidents resulting in the large number of casualties and the high level of civilian destruction and trauma mentioned in the Fact-Finding Mission's report, and in other sources, about which the Government of Israel and its forces have admitted to a single violation. For nearly every instance referred to in the Israeli reports of July 2009 and January 2010 they claim military necessity, or that fire emanating from a civilian target against Israeli forces justified the harm that resulted from the military action. It should have appeared curious, even to the drafters of the report, that so many incidents which others considered to be violations of international humanitarian law were always found justifiable or excusable. The reader of the Israeli reports will also not fail to notice that facts reported by the Fact-Finding Mission and other human rights organizations have been avoided. Nevertheless, it is noteworthy that Israel, in a separate action, readily admitted responsibility to a United Nations Board of Inquiry regarding Israeli military attacks upon United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) schools, health centres and its headquarters in Gaza during Operation Cast Lead. Obviously, the admission to damage to United Nations property, including Israel's willingness to provide US$ 10.5 million in compensation to the United Nations, does not carry with it the same legal and political consequences as would admissions to wrongful conduct against Palestinians. Even in the case of admission to liability in the attack upon the UNRWA school, there was no admission of criminal responsibility or of responsibility for violations of international humanitarian law by the Israeli occupying forces. The conclusion has to be in the nature of a rhetorical question, namely: how is it possible that so many incidents resulting in so many deaths and injuries to innocent and defenceless civilians, including children, women, the elderly and infirm persons, and causing such wanton destruction and damage to property, including to vital civilian infrastructure such as hospitals, children's schools,

and water, sanitation and electricity systems necessary for the functioning of daily life and the well-being of the society, is consistently justified and excused, in certain instances as an "error in judgment" and in other instances as an innocent "mistake"?

85. The enormity of the harm that was inflicted upon the Palestinian people in Gaza, in addition to the harm inflicted upon the people of the West Bank during this time, as well as on earlier equally tragic occasions, is no longer in question, as the facts have become so well known worldwide. What is astounding is the lack of responsibility by the Government of Israel to account for this immeasurable human harm, amounting to war crimes and crimes against humanity, and the lack of expression of concern for the damage committed by its occupying forces. Instead, we witness a cynical attempt to justify the harm committed and a cover-up of violations of international humanitarian law and international human rights law by those who directly perpetrated these acts and by their superiors, both military and civilian.

86. The inference from such conduct can only be either that the Palestinians are considered by their occupier as lesser human beings, or that whatever harm is inflicted upon them, no matter how indiscriminate, excessive and disproportionate, is justifiable on the basis of Israel's exceptionalism and granted impunity. Israel has on many occasions shown how concerned it is about its citizens, for example Corporal Shalit, who, as noted above, is held by one of the Palestinian armed resistance groups in Gaza (not under the control of the Palestinian National Authority). This is a laudable position on the part of a Government and its people who are concerned for their countrymen. If a similar concern for the lives and well-being of Palestinians were to be displayed by the Government of Israel and its people, it would be the most fundamental change in the dynamics of this prolonged, illegitimate 43-year occupation and could surely serve as a basis for future peace and reconciliation between the two people. Regrettably, the pursuit of a political settlement for peace without a humanistic foundation that genuinely recognizes the value of human life, the dignity of all people and the need for justice is not likely to produce reconciliation or a durable peace.

87. The opportunity given by the General Assembly to both Israel and the "Palestinian side" to address the issue of harm in the context of the Israeli military operations between 27 December 2008 and 18 January 2009 should have been opportunity for the Government of Israel to finally take responsibility, as opposed to seeking to evade it. Israel should have seized this opportunity to express its concern, at both the national and international levels, for the harm inflicted on the Palestinian people, and to change the discourse from that of a superior military occupying Power inflicting harm on a captive civilian population that is unable to defend itself to one of human concern, morality and justice. Such a change in discourse, perception and actions is an indispensable requisite for peace and coexistence in the future. There can be no difference in the value of the human life and dignity of an Israeli and a Palestinian. Moreover, in the context of the present report, there can be no moral equivalency between the deaths of three Israeli civilians and the deaths of over 1,300 Palestinian civilians, as well as the injury of over 6,000 other Palestinian civilians.

88. The numbers and the facts speak for themselves and it is time for nations to speak on the basis of humanistic terms and to ensure accountability and justice, if they are genuinely interested in peace for Palestine and Israel and a new era for the Middle Eastern region as a whole, in which international law, human rights, security and coexistence are accorded primacy over conflict,

aggression, force, violence, instability and disregard for human rights. The importance of accountability and redress for wrongs committed is central to the three monotheistic religions to which the Holy Land is home. This is stressed in a *hadith* by the Prophet Mohammed (Peace be upon Him): "If you see a wrong you must right it with your hand, if you can, or with your words or with your gaze — or in your heart, but that is the minimum required by of faith." Moreover, as stated in the Talmud, "the world rests on three pillars; it rests on truth, peace and justice", and in a Talmudic commentary it is stated that "if justice is realized, truth is vindicated and peace results". Further, in this regard, it is well established in contemporary international law and contemporary international relations, particularly with respect to post-conflict justice, that, as simply and eloquently stated by Pope John Paul II, there is "no peace without justice".

Palestinian Independent Investigation Commission established pursuant to the Goldstone report: violations allegedly committed by Palestinians

Members of the Commission

Chairman: Judge Issa Abu Sharar, former Head of the Supreme Court and former President of the Supreme Judicial Council

Member: Judge Zuhair al-Surani, former Head of the Supreme Court and former President of the Supreme Judicial Council

Member: Mr. Ghassan Farmand, Professor of Law at Birzeit University

Member: Mr. Yasser al-Amuri, Professor of International Law at Birzeit University

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Mr. Mahmoud Cherif Bassiouni, international expert

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I. Introduction

1. The present report is submitted pursuant to United Nations General Assembly resolution 64/10, entitled "Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict". In that report (the Goldstone report), the Head of the Mission, South African Justice Richard Goldstone, referred to human rights violations that had been perpetrated during the attack on the Gaza Strip that was carried out by Israeli occupation forces between 27 December 2008 and 17 January 2009. The report noted that during the same period, in addition to the violations of international humanitarian law and international human rights law that amounted to war crimes and crimes against humanity that were perpetrated by the occupation forces, the Palestinian side was also responsible for human rights violations. The United Nations Fact-Finding Mission recommended that investigations should be launched into the violations that it had reported.

2. In the light of the foregoing, on 25 January 2010 an independent Palestinian commission was formed: the Palestinian Independent Investigation Commission established pursuant to the Goldstone report. The Commission was established pursuant to a presidential decree issued by Mr. Mahmoud Abbas, President of the State of Palestine, Chairman of the Executive Committee of the Palestine Liberation Organization and President of the Palestinian National Authority.

3. The investigation conducted by the Commission concentrated on human rights violations by the Palestinian side in both the West Bank and the Gaza Strip during the period referred to above, on the basis of the Goldstone report. The investigation was genuine, independent and professional, and sought no justifications or grounds for equivocation.

4. Nevertheless, we cannot ignore the patent truth that all the violations that have happened and are continuing to happen are the outcome and manifestation of one thing and one thing only, namely, the Israeli occupation of Palestinian land.

5. While we were preparing the present report, we felt that a new day was beginning to dawn, giving grounds for hope that justice would have a place in this part of the world and that the criminals who continually and systematically perpetrate international crimes and flagrant violations would find it increasingly difficult to escape due process. We felt that the cries of the victims were finally penetrating the walls of the international justice institutions, which had been rendered weak and ineffectual by the narrow political considerations that had overridden the values of humanitarianism, justice and equality. The Commission avers that unless people who are facing injustice, oppression and crime feel that they have some protection and are able to truly enjoy their human rights, dignity and justice, there will be no peace, security or stability. On the contrary, violations will continue to be perpetrated and the suffering will never end.

6. The Commission believes that no investigative or fact-finding commission can address violations of any type without taking into consideration the influencing factors, circumstances and legal framework within which violations take place. Therefore, and in order to place matters in their proper context, there is no choice but to consider the legal status of the Occupied Palestinian Territory.

7. After the First World War, by virtue of the Mandate for Palestine that entered into force in September 1922, the League of Nations entrusted to

Britain a mandate over Palestine. That Mandate was in keeping with the aims of the Covenant of the League of Nations, which in article 22, concerning mandates over countries that had not reached a stage of development that enabled them to be self-governing, provided that administrative advice and assistance should be rendered to such countries by a Mandatory until such time as they were able to stand alone.

8. In 1947, Great Britain announced its decision to withdraw from Palestine, and specified that 1 August 1948 would be the date on which its tutelage would terminate. It subsequently brought forward that date to 15 May 1948.

9. On 29 November 1947, the United Nations General Assembly adopted resolution 181 (II) concerning the future government of Palestine, in which it recommended to the United Kingdom, as the mandatory Power for Palestine, and to all other Members of the United Nations the adoption and implementation of the Plan of Partition whereby independent Arab and Jewish States and a special international regime for the city of Jerusalem would come into existence.

10. On 14 May 1948, on the basis of that General Assembly resolution, Israel announced its independence, and an armed struggle began between Israel and several Arab States. The Partition Plan was never implemented: Israel seized by force large swathes of the region, carried out mass expulsions and killings of the Palestinian population, and destroyed hundreds of Palestinian villages and communities, thereby creating the Palestine refugee problem. The wide-ranging international crimes that were committed led to the dispossession and displacement of a large percentage of the Palestinian population and the seizure of a sizeable proportion of its land. It should be noted that Zionist organizations had targeted the Palestinian Arabs and their property well before the resolution on partition: such organizations had carried out scores of hostile operations against the Palestinian Arabs that had caused hundreds of casualties as well as destroying property and agricultural land.

11. Under the aegis of the United Nations, armistice agreements that are known as the Rhodes agreements were signed by Israel on the one hand and, on the other hand, each of Egypt, Jordan, Lebanon and Syria on 24 February, 3 April, 23 March and 20 July 1949 respectively. Armistice lines were determined and subsequently became known as "green lines" because of the colour that was used to draw them on maps. It was agreed that no interpretation could be given to agreement provisions that would prejudice a final political settlement between the parties. The agreements also stressed that agreements reached with regard to territory, future borders and the related claims of any of the parties should not be prejudiced.

12. The General Assembly in its resolution 273 (III), concerning admission of Israel to membership in the United Nations, recalled its resolutions 181 (II), concerning the future government of Palestine, and 194 (III) of 11 December 1948, which addresses the return of Palestinian refugees, and demanded that they should be implemented. On behalf of his Government, the representative of Israel undertook before the Special Political and Decolonization Committee to honour and implement resolutions 181 (II) and 194 (III). Israeli membership of the United Nations was therefore conditional upon its application of and compliance with international resolutions.

13. From that time to the present date, hundreds of international resolutions on Palestine have been adopted and, as was reaffirmed in General Assembly resolution 57/107 of 3 December 2002, the United Nations has a permanent responsibility towards the question of Palestine until the question is resolved in

all its aspects in a satisfactory manner in accordance with international resolutions. That affirmation indicates that Palestine will remain the responsibility of the United Nations until the Palestinian people gains the right to self-determination, a right that is considered to be a peremptory norm of international law, and establishes a sovereign independent State as the embodiment of that right, as has been set forth in many General Assembly and Security Council resolutions.

14. Subsequent to the Israeli aggression of 1967, Israel occupied all the remaining Palestinian land to the east of the Green Line. Thus, the West Bank, including East Jerusalem, and the Gaza Strip became subject to Israeli occupation. One international resolution after another was adopted, in particular, Security Council resolutions 242 (1967) and 338 (1973). The former emphasized the inadmissibility of the acquisition of territory by war and called for the withdrawal of Israel armed forces from territories occupied in the recent conflict.

15. The Palestinian lands that fell under the control of Israeli forces subsequent to the Israeli aggression of June 1967 are considered to be occupied territories as defined by the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949. Furthermore, a number of Security Council resolutions stress that the term "occupied territories" must be applied to those lands.

16. Scores of General Assembly resolutions have affirmed that the provisions of the 1949 Fourth Geneva Convention are applicable to and valid for the Occupied Palestinian Territory. Such resolutions include 2443 (XXIII) of 19 December 1968, in which it was decided to establish a Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories. That was the first General Assembly resolution to demand that Israel should respect its obligation to apply the Fourth Geneva Convention in the occupied Arab territories. Scores of other relevant General Assembly resolutions have been reiterated every year, including 2546 (XXIV) of 11 December 1969, 2727 (XXV) of 15 December 1970, 3092 (XXVIII) of 7 December 1973 and 43/58A and 43/58B of 6 December 1988.

17. By their daily practices in the Occupied Palestinian Territory, the Israeli occupying authorities have violated their legal obligations under the provisions and principles of international humanitarian law, customary humanitarian law and international human rights law. The Israeli forces and military administration have committed, inter alia, the following crimes: the transfer of civilian inhabitants of the occupying State to the Occupied Palestinian Territory, the establishment of hundreds of settlements and the creation of an administrative system that controls all aspects of the lives of the Palestinian population, with a view to promoting the well-being of the Jewish settlers. Furthermore, all natural resources are controlled and used for the benefit of those settlers. Land has been appropriated and annexed in a manner inconsistent with the laws that govern the role and presence of a military occupier in an occupied zone. In addition, extrajudicial killings and arbitrary detentions have been carried out, the conditions under which protected civilian populations live have been made difficult, populations have been forcibly relocated and restrictions placed on their movements with a view to minimizing the Palestinian demographic factor and preventing the Palestinian people from exercising its right to self-determination.

18. In addition to the foregoing, the Israeli occupying authorities, throughout their long occupation of Palestinian territory, have changed the legislative system that was in place before the occupation by issuing hundreds of military orders, the aim of which was to reinforce the predominance of the occupation

and control the status of the inhabitants and land, with complete disregard for the welfare of the protected population under occupation, concern for which is one of the most important principles of international humanitarian law, and in breach of the principles and provisions of the 1949 Fourth Geneva Convention and the Hague Regulations of 1907.

19. In 1980, the Israeli occupying authorities promulgated the Basic Law: Jerusalem, whereby that city is proclaimed as the capital of Israel. Under that Law, the western part of Jerusalem and the eastern part that was occupied in 1967, "complete and united", are stated to be the capital of Israel. The Law also provides that Jerusalem is the seat of the President of the State, the Knesset, the Government and the Supreme Court. In 2001, the Knesset added a new article to the Law which provides that no authority that is stipulated in the law of the State of Israel or of the Jerusalem Municipality may be transferred to a foreign body.

20. The annexation by Israel of occupied Jerusalem contravenes the purposes and principles of the Charter of the United Nations, which provide that all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. The annexation of East Jerusalem also contravenes the obligations of the occupying State under the provisions and principles of international human rights instruments, international humanitarian law and the peremptory norms of international law, including the principle of the rights of peoples to self-determination and permanent sovereignty over their natural wealth and resources.

21. Security Council resolution 478 (1980) of 20 August 1980 affirms the illegality of Israel's conduct in that regard. In it, the Council decided not to recognize the "basic law" and called upon those States that had established diplomatic missions in Jerusalem to withdraw them. Scores of General Assembly resolutions also reject the measure.

22. The Palestinians, through their only legitimate representative, the Palestine Liberation Organization which, pursuant to General Assembly resolution 3237 (XXIX), has had the status of Permanent Observer at the United Nations since 1974, have made every endeavour to bring about a just peace based on United Nations resolutions and, in particular, Security Council resolution 242 (1967) and other pertinent Security Council and General Assembly resolutions. Their aim is the establishment of a Palestinian State on the Palestinian land that was occupied in 1967 and the withdrawal of occupying forces from that land, as well as the settlement of the issue of the Palestine refugees in accordance with General Assembly resolution 194 (III). Those efforts led to the signature by the Palestine Liberation Organization and Israel of the Oslo Declaration of Principles on 13 September 1993; the Cairo Agreement on Gaza and Jericho on 5 May 1994; and the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip on 28 September 1995.

23. In the light of those agreements, a Palestinian national authority was established in order to exercise self-rule over certain parts of the Palestinian territory occupied since 1967 and manage and facilitate certain administrative and functional tasks. As detailed in the agreements that had been concluded, that authority was granted specific administrative, legislative and judicial powers for an interim stage to 1999, before the peaceful settlement of the struggle and the conclusion of permanent-status negotiations.

24. The Israeli occupation continued to control the occupied territory and redoubled its appropriation of land. It built more settlements while conducting pro forma negotiations that were designed to gain time in order to impose facts on the ground that would affect the outcome of any future final settlement. As a result, Palestinians lost hope that there would ever be a peace that would enable them to exercise their right to self-determination and sovereignty over their land and resources in accordance with international resolutions and principles, and this led to the outbreak in September 2000 of the al-Aqsa intifada. The occupation responded by suppression, killing, arbitrary detention, the destruction of property, various forms of collective punishment, retaliation against the civilian population, the demolition of homes, the storming of Palestinian towns in April 2002 and the destruction of every Palestinian National Authority seat and centre.

25. Military occupation is viewed by contemporary international law as illegal and as one form of violation by a State of its international undertaking to prohibit the threat or use of force. It is therefore not reasonable for the rules of international law to impose an obligation on the inhabitants of occupied territory to submit to the interests of those who are in breach of their own obligations. The Palestinian struggle derives its legitimacy from the unquestionable right of peoples to self-determination as one of the means to which peoples have recourse in order to remove obstacles to their free exercise of that right. It also derives legitimacy from the right to self-defence, which is one of the lawful manifestations of a population's opposition to an occupier which uses its armed forces to consolidate and maintain its occupation of and control over the land. There are grounds for that legitimacy in many international resolutions, including, inter alia, General Assembly resolution 2649 (XXV) of 30 November 1970, which affirms the legitimacy of the struggle of peoples under colonial and alien domination recognized as being entitled to the right of self-determination, and General Assembly resolution 2787 (XXVI) of 6 December 1971, which confirmed the legality of the peoples' struggle for self-determination and liberation from colonial and foreign domination, including that of the Palestinian people. Scores of other General Assembly resolutions have also affirmed that right.

26. Not only United Nations resolutions, but also international humanitarian legal instruments and, in particular, the four Geneva Conventions of 1949 and the First Additional Protocol of 1977, assert the right of resistance combatants to enjoy legal protection and gain the legal status of combatants and, consequently, to be treated as prisoners of war.

27. For their part, resistance combatants must, when carrying out military operations, respect and apply the rules and norms of war and other obligations under international humanitarian law.

28. On 7 June 1982, Palestine presented a unilateral written undertaking to Switzerland, the depositary of the Geneva Conventions, to be bound by the Fourth Geneva Convention and other international instruments. Switzerland accepted that undertaking without implying that it represented an instrument of ratification. The Declaration of Independence issued by the Palestinian National Council in 1988 clearly stated that the State of Palestine would respect the provisions of the Charter of the United Nations and the Universal Declaration of Human Rights.

29. What possibly concerns us most about the current functional division is its impact on the nature and content of the legal terms of reference that govern the relationship of the Palestinians with each side, namely, the Palestinian National Authority on the one hand and, on the other hand, the occupying State of Israel.

As a result of the duplication whereby a Palestinian national authority was established in order to exercise self-rule over parts of the territory while the occupation of its territory continues, the Palestinians are controlled by a twofold international legal system, which varies depending on the administrative and political system to which they are subject.

30. The Palestinians are governed by the system of international human rights law constituting the legal system that regulates the relationship between citizen and State, which in this case is the relationship between Palestinian and Palestinian National Authority, while at the same time being subject to the system of international humanitarian law, the rules and provisions of which regulate the relationship between the occupier and the civilian population in occupied territory. That system also comprises international human rights law and, in particular, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. That system will remain in force for as long as the occupation continues to oppress the Palestinian territory, regardless of the existence of the Palestinian National Authority. The International Court of Justice Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory refers to that situation when it states in paragraph 78 that the territories situated between the Green Line and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power. The Opinion further stated, in paragraph 112, that Israel, as the occupying Power, is bound by the provisions of the International Covenant on Economic, Social and Cultural Rights. Furthermore, it is under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities.

31. However, the daily practices of the Israeli occupying authorities well exceed the imposition of obstacles to the undertaking by the Palestinian National Authority of its duties, and sabotage the Authority's role, disrupting the lives of the Palestinian people, as when the Palestinian President Yasser Arafat was kept under siege until the day he died. The goal was to destroy any serious attempt by the Palestinian people to realize its national rights, and to maintain Israeli control over the land and resources, leaving the Palestinian people to deal with the administrative details of their daily lives, and that goal is clearly demonstrated by the daily realities of the occupation.

32. On 18 December 2003, the Prime Minister of Israel at that time, Ariel Sharon, announced at the fourth annual Herzliya Conference the "Disengagement Plan", whereby Israel initiated separation or disengagement from the Palestinians. The Plan soon became official policy: it was adopted by the Israeli Government on 6 June 2004 and by the Knesset on 25 October 2004.

33. Under the Plan, as set forth in the official document, Israel unilaterally determined that its occupation forces should withdraw from the Gaza Strip and certain Palestinian areas in the northern West Bank. It would also dismantle the following settlements in the Gaza Strip: Morag, Netzarim, Kfar Darom, Elei Sinai, Dugit, and Nisanit and the Gush Katif bloc; and four settlements in the northern West Bank: Ganim, Kadim, Sa-Nur and Homesh.

34. The "Disengagement Plan" did not, it was clear, mean that the Israeli occupation of the areas from which it would withdraw would end: it was in fact

a redeployment of armed forces. The Plan affirms that Israel, in order to maintain security, has the right after disengagement to take a set of security measures on Palestinian territory, as set forth below:

(a) The State of Israel will continue to maintain exclusive authority in Gaza air space and will continue to exercise security activity in the sea off the coast of the Gaza Strip;

(b) The Gaza Strip and the areas of the West Bank from which Israeli forces are withdrawn shall be demilitarized and shall be devoid of weaponry, the presence of which does not accord with the Israeli-Palestinian agreements;

(c) The State of Israel reserves its fundamental right of self-defence, both preventive and reactive, including where necessary the use of force, in respect of threats emanating from the Gaza Strip and the northern West Bank;

(d) In other areas of the West Bank, current security activity will continue;

(e) The State of Israel agrees that by coordination with it, advice, assistance and training will be provided to the Palestinian security forces in order to combat terrorism and maintain public order;

(f) No foreign security presence may enter the Gaza Strip and/or the West Bank without being coordinated with and approved by the State of Israel;

(g) The State of Israel will continue to maintain a military presence along the border between the Gaza Strip and Egypt (Philadelphi Route);

(h) The State of Israel will continue building the Security Fence, in accordance with the relevant decisions of the Government. The route will take into account humanitarian considerations;

(i) The completion of the plan will serve to dispel the claims regarding Israel's responsibility for the Palestinians in the Gaza Strip.

35. The Gaza Strip continues to be occupied territory, as do the West Bank and the eastern part of the city of Jerusalem, which were seized by the Israeli occupation authorities during the June 1967 war. All those territories are occupied territories as understood by the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949.

36. On the basis of the precepts of general international law, the unilateral disengagement of Israel from the Gaza Strip, which is an inalienable part of Palestinian territory, was effectively a redeployment of occupation forces away from that area rather than a termination of the state of occupation, given that the withdrawal did not extend to all components of that Palestinian geographical area. The occupation continues to prevent Palestinians and their legitimate representative, the Palestine Liberation Organization, from exercising real and legal sovereignty over the Gaza Strip: since withdrawal, the Israeli occupying authorities have maintained absolute control of the air space and territorial waters as well as of certain administrative affairs.

37. At the 23rd plenary meeting of its tenth emergency special session, held on 8 December 2003, the General Assembly decided, in resolution ES-10/14, to request the International Court of Justice to urgently render an advisory opinion on the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem.

38. On 9 July 2004, the International Court of Justice issued its Advisory Opinion on that matter. It affirmed that the Fourth Geneva Convention is applicable to the Occupied Palestinian Territory and that Israel is legally bound by the provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the United Nations Convention on the Rights of the Child. It also affirmed that the legitimate rights of the Palestinian people include the right to self-determination and that the acquisition and annexation by force of Palestinian territory by the occupying State is illegal. The Court concluded that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law and that construction of the wall is contrary to international law.

39. The aim of the Israeli occupier in stating that Gaza is no longer occupied is, without question, to shirk its legal obligations as occupier and deal with the Strip as if it were sovereign territory, thereby giving Israel what it claims is the legitimate right to defend itself against what it calls "terrorist attacks". Another of its aims is to completely separate the Gaza Strip from the West Bank, thereby sabotaging the right of the Palestinian people to exercise its right to self-determination and the territorial integrity of the Occupied Palestinian Territory.

40. On 19 September 2007, Israel declared the Gaza Strip hostile territory, thereby paving the way for the imposition of the siege against it. As a result, and in flagrant violation of the rules of international law and the legal obligations of Israel as the occupying Power, the living and humanitarian conditions of more than 1.5 million people have become extremely difficult. As the occupying Power, Israel is obliged by the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949 to lift the siege on Gaza and permit the entry of medical and food supplies and everything else that is essential to ensure that the inhabitants of Gaza have the necessities of life.

41. The aim of presenting the above facts is to place matters in their proper legal context, without attempting to underestimate the legal obligations that the Palestinian side, represented by the Palestinian National Authority, has in the Occupied Palestinian Territory, which have been complicated by the breach caused by the forcible takeover of the Gaza Strip by the Islamic Resistance Movement, Hamas, on 12 June 2007. That takeover involved widespread killing, exemplary punishment and torture and destroyed much that had been achieved at many levels, including, inter alia, the basis of the Palestinian justice sector, resulting in a twofold system. The judicial system was divided between two bodies, the first of which, the Supreme Judicial Council, holds sway in the West Bank, while the second, the Supreme Justice Council, has authority in the Gaza Strip. The latter was instructed by the de facto authority in the Gaza Strip to administer and facilitate justice and oversee appointments and promotions and other matters. The Palestinian courts were no longer able to impose and implement their judgements; indeed, it became common for the Palestinian security apparatus to ignore and disregard those judgements, particularly when they related to the release of arbitrarily detained prisoners. Judgements relevant to the Gaza Strip that were issued by Palestinian courts in the West Bank became impossible to enforce there, and the same applied to judgements relevant to the West Bank that were issued in the Gaza Strip.

42. The political schism also led to the politicization of the enjoyment of rights and freedoms, which largely became dependent upon individual political affiliation. Furthermore, each party formed a special division for "security vetting", or a team to study every file or request, whether for appointment to a post, permission to establish an association or a company, or any other means

of employment for which a permit or registration is required by the relevant authorities, the aim being to prevent any person perceived as belonging to the other party from obtaining any such permit or employment.

43. The Palestinian political schism led to tension and mutual human rights violations that took place before the Israeli onslaught on the Gaza Strip and continued throughout and after that onslaught. As a result, it cannot be claimed that all the violations that were committed in the West Bank by the various Palestinian security and administrative agencies, or those that were committed in the Gaza Strip by the comparable agencies of the de facto authority were linked to the Israeli attack on the Gaza Strip that took place between 27 December 2008 and 17 January 2009, and killed hundreds of civilians, made hundreds of thousands more homeless and destroyed thousands of residential and public buildings.

44. The Palestinian situation is unique because of the continuing Israeli occupation of Palestinian territory and Israel's continual perpetration of crimes that amount to war crimes and crimes against humanity. At the same time, there is a Palestinian national authority that is responsible for some aspects of the lives of the population, which makes legal analysis difficult. However, the immutable point is that the obligations of the occupier are regulated by customary and contractual international law. The responsibilities of the Palestinian side, which is under occupation, are governed by customary law, in particular, that which concerns resistance to occupation. Such resistance must observe the rules and laws of war, which have acquired binding force not only for States but also for individuals engaged in resistance.

45. Consequently, the Palestinian National Authority, in the exercise of its powers, is obliged to respect and apply international human rights law, in particular, the international human rights canon represented by the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. That obligation is entailed by the United Nations observer status acquired by the Palestine Liberation Organization, as is the obligation to respect the Charter of the United Nations and any human rights-related declarations and resolutions pursuant thereto. Furthermore, in the Palestinian Declaration of Independence that was adopted by the Palestinian National Council in 1988, the State of Palestine proclaimed its commitment to the principles and purposes of the Charter of the United Nations and to the Universal Declaration of Human Rights. Given the particular legal value of that document, which effectively constitutes the ultimate legal foundation and terms of reference for the principles and grounds on which the State of Palestine will be established, there is no question but that the Palestinian National Authority is obliged to respect the undertakings to which the State made a commitment in the Declaration, and to refrain from taking any action that conflicts with or is in contravention of those principles.

46. In view of the fact that certain international human rights instruments are legally binding, those responsible for enforcing general international law have an obligation to respect and enforce those instruments. The Palestine Liberation Organization and the Palestinian National Authority therefore have a responsibility and a duty to respect and enforce those instruments.

47. The Palestinian political schism and the complete detachment of the West Bank from the Gaza Strip were not the optimum conditions in which to carry out the work of the Commission, and meant that the Commission was not able to investigate certain of the conclusions of the Goldstone report in respect of violations committed by the Palestinian side, particularly in the Gaza Strip.

Furthermore, it was difficult to obtain certain information from eyewitnesses and victims, either because they were unable to provide it, or because they were afraid and preferred to remain silent.

48. Notwithstanding the complexity of the political and legal situation, the Commission was able to investigate the majority of cases cited in the Goldstone report and draw conclusions and make specific recommendations on the basis of its responsibility to be impartial, independent and earnest. During its investigation, the Commission faced no obstacles to obtaining information, particularly in the West Bank, although the political schism did impede its capacity to investigate all the violations that took place in the Gaza Strip.

49. As soon as it received its mandate, the Commission studied every similar undertaking throughout the world and devised a system and operating rules that were consistent with international standards for genuine, impartial and effective independent investigations. It was particularly concerned to protect witnesses and safeguard the information it obtained. It approached civil society by holding meetings at which it heard suggestions and gave information about the duties and powers of the Commission. Such meetings had a positive impact on the work of the Commission.

50. The Commission is of the view that commitment by the Palestinian National Authority and the Palestine Liberation Organization to the principles of human rights and rules of international law, and the use of those principles by the Authority as political and legal guidelines, can only bring the Palestinians closer to realizing their national aims, aims that cannot be achieved without belief in and assertion of the collective and individual rights guaranteed by international law under all circumstances and at every stage, including the stage of struggle against colonization and occupation and that of establishing a Palestinian state. No society that fails to safeguard the dignity and rights of its citizens or whose laws are not based on principles of human rights and justice is able to confront external or internal threats or keep abreast of contemporary developments. Failure to punish someone who has committed a crime is tantamount to an open invitation to commit further crimes.

51. While hearing the testimonies of eyewitnesses and victims, the Commission became increasingly convinced that the frustrations and lack of expectations with regard to human rights, international law and the international community caused by the failure to protect the civilian population living under occupation constitute a long-term risk to the community and its essential humanity. The international community must give responsible consideration to that matter, with a view to ending the suffering of the Palestinian people, by ending the occupation on the basis of the principles and rules of international law, by enabling the Palestinian people to exercise its right to self-determination and establish an independent State, and by permitting the refugees to return to the homes from which they were forced to flee.

52. The crisis of rights and freedoms in Palestinian territory is connected to the political schism between the West Bank and the Gaza Strip. Indeed, those rights and freedoms have become the hostages of that situation. If the schism continues, the crisis affecting basic rights and freedoms in Palestinian territory will be prolonged and exacerbated, whereas, if the schism ends, many of those violations will cease, because it is largely responsible for them. The division between Palestinians has turned rights and freedoms into a bargaining chip that each side uses to bring pressure to bear on the other.

II. Background

53. On 27 December 2008, Israel, the occupying Power, launched a military attack against the Gaza Strip that lasted 23 days, ending on 18 January 2009. Israel called this attack "Operation Cast Lead". Thousands of Palestinians were killed and injured as a result of the attack, which also caused widespread destruction to infrastructure, buildings and public and private property.

54. On 8 January 2009, the Security Council adopted resolution 1860 (2009), in which it expressed its grave concern at the escalation of violence and the deterioration of the situation, in particular the heavy civilian casualties. The Security Council also stressed the urgency of and called for an immediate, durable and fully respected ceasefire, leading to the full withdrawal of Israeli forces from the Gaza Strip. Nonetheless, the aggression continued for a further 10 days after the resolution was adopted.

55. On 3 April 2009, in response to the serious violations committed during the war, the United Nations Human Rights Council established the United Nations Fact-Finding Mission on the Gaza Conflict. The Fact-Finding Mission's mandate was to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in the Gaza Strip during the period from 27 December 2008 to 18 January 2009, whether before, during or after. The Fact-Finding Mission was headed by Justice Richard Goldstone, former Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda and former member of the South African Constitutional Court. The other Mission members were Ms. Christine Chinkin, Professor of International Law at the London School of Economics and Political Science; Ms. Hina Jilani, Advocate of the Supreme Court of Pakistan, former Special Representative of the Secretary-General on Human Rights Defenders and member of the International Commission of Inquiry on Darfur; and Mr. Desmond Travers, a former officer in the Irish Armed Forces and member of the Board of Directors of the Institute for International Criminal Investigations (IICI).

56. The report of the Fact-Finding Mission was submitted to the Human Rights Council, which adopted the report and transmitted it to the General Assembly. On 5 November 2009, the Assembly adopted resolution 64/10, in which it urges, in line with the recommendation of the Fact-Finding Mission, the undertaking by the Palestinian side, within a period of three months, of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Mission, towards ensuring accountability and justice.

57. The report was not submitted to the United Nations by the deadline specified in the above-mentioned resolution. On 26 February 2010, the General Assembly adopted resolution 64/254, paragraph 3 of which reiterates the Assembly's urging for the conduct by the Palestinian side of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice.

58. On 25 January 2010, Mr. Mahmoud Abbas, President of the State of Palestine, Chairman of the Executive Committee of the Palestine Liberation Organization and President of the Palestinian National Authority, issued a

decree establishing an independent commission to investigate alleged violations of international humanitarian and international human rights law in the West Bank and the Gaza Strip, in accordance with the provisions of General Assembly resolution 64/254. The Commission was headed by Judge Issa Abu Sharar, former Head of the Supreme Court and former President of the Supreme Judicial Council. The other Commission members were Judge Zuhair al-Surani, former Head of the Supreme Court and former President of the Supreme Judicial Council; Mr. Ghassan Farmand, Professor of Law at Birzeit University; Mr. Yasir al-Amuri, Professor of International Law at Birzeit University; Mr. Nasser Rayyes, attorney and expert in international human rights and international humanitarian law. Mr. Rayyes refused his appointment, because of a conflict of interest: he serves as a legal consultant to Al-Haq human rights organization, which monitored and documented violations that fell within the Commission's mandate.

59. Upon the issuance of the Presidential Decree, the Commission began work immediately, making the administrative and logistical preparations required for the conduct of the investigation. A team of investigators was contracted and contacts were made with civil society organizations concerned with human rights with a view to obtaining reports and other information regarding the violations the Commission would be investigating.

60. The Commission drafted its Statute, which it adopted on 7 February 2010, and established its headquarters in Ramallah. Under the Statute, the Commission's mandate is to investigate the Palestinian violations cited in the report of the Fact-Finding Mission established by the Human Rights Council and led by Judge Richard Goldstone. The Commission's geographical purview included all occupied Palestinian territory. The following fell within the scope of the Commission's mandate: arbitrary detention and torture, violation of freedom to form associations, violation of press freedoms, violation of freedom of peaceful assembly, employment discrimination in the West Bank based on political affiliation, arbitrary killings and detention, and torture and abuse in the Gaza Strip.

61. With regard to the time period its investigation should cover, the Commission decided to look into violations that were allegedly committed by Palestinian parties prior to and after the Israeli aggression against the Gaza Strip, in order to enable it to develop a sound understanding of human rights conditions during those periods.

62. With a view to the optimal execution of its mandate, the Statute authorizes the Commission to collect information, evidence and data relevant to its activities, receive accusations or complaints of human rights violations that fall within its mandate, and hear testimony from complainants, including victims and eyewitnesses, and from rights organizations and official agencies. The Statute also emphasized that the Commission must abide by international human rights, humanitarian and criminal law, honour Palestine's unilateral obligations arising from its stated commitment to respect the Geneva Conventions, and comply with the laws currently in force in Palestine. The Statute further emphasized the complete independence of Commission members, with a view to ensuring that the investigation was professional, impartial and in conformity with international standards. No party was allowed to interfere with or influence the course of the investigation. The Commission maintained the confidentiality of complaints and other information related to its work and provided protection to complainants, including victims and eyewitnesses.

63. The Commission regularly consulted independent experts with a view to ensuring the professionalism of its work and preserving its independence. On 23 February 2010, the Commission travelled to the Arab Republic of Egypt and consulted with Mr. Mahmoud Cherif Bassiouni, an expert in international law. On 25 February 2010, the Commission consulted with Mr. Ahmed ben Helli, Deputy Secretary-General of the League of Arab States, and requested the League to facilitate the Commission's work, thereby enabling it to conduct its investigation.

64. On 7 April 2010, the Commission met in Ramallah with rights activists, officials of Palestinian rights organizations and national figures, in order to inform them of the Commission's working methods and plan of work, and listen to their suggestions regarding the investigation. The following were among the human rights organizations that attended the meeting in the West Bank: Al-Haq, Al-Dameer Association for Human Rights, Democracy and Workers' Rights Centre, Independent Commission for Human Rights, Human Rights and Democracy Media Centre (SHAMS), Ensan Centre for Democracy and Human Rights, Coalition for Integrity and Accountability (AMAN), Ramallah Centre for Human Rights Studies (RCHRS), Jerusalem Legal Aid and Human Rights Centre, and Centre for Development.

65. The participants were updated on the Commission's activities and apprised of the substantive and temporal scope of its mandate, after which a discussion ensued concerning the Commission's methods of work, potential difficulties and how to resolve them, particularly with regard to communication with the Gaza Strip and the conduct of the investigation in that territory, protection of complainants, the Commission's independence, and efforts made to contact officials of the de facto authority in the Gaza Strip with a view to the conduct of the investigation in that territory. A number of recommendations were made at the meeting, the most significant of which concerned the need to coordinate and cooperate with local and Arab media in order to encourage victims and eyewitnesses to appear before the Commission, organize field visits to hear complaints, facilitate the process by which citizens could make complaints, maintain communication with the Gaza Strip in order to facilitate the conduct of the investigation in that territory, and the importance of presenting a consolidated report.

66. On the same day, the Commission held a similar meeting with the representatives of civil society organizations in the Gaza Strip concerned with human rights. The meeting took place via videoconference because the Commission was unable to travel to the Gaza Strip. Participants at the meeting included: Al-Dameer Association for Human Rights, Al-Mezan Centre for Human Rights and the Independent Commission for Human Rights in the Gaza Strip. After being updated on the Commission's work by Judge Issa Abu Sharar, the participants discussed several matters, including the factional split and its effect on the Commission's work, the likelihood of the Hamas movement allowing the Commission to investigate on the ground in the Gaza Strip, greater cooperation with the media in order to reach all victims, and continued communication with rights organizations in the Gaza Strip with a view to involving them in the Commission's work.

67. On 23 March 2010, the Commission ordered its Technical Team to collect and analyse reports prepared by Palestinian and international rights organizations concerning violations that fell within the Commission's mandate, to be used for consultation in the course of the investigation.

68. In April 2010, the Commission decided to place notices in the most widely disseminated media in the West Bank and the Gaza Strip. Those notices

called on persons who claimed that their rights had been violated by the Palestinian Authority in the West Bank or by the de facto authority in the Gaza Strip to present their complaints to the Commission. The notice appeared five times in local newspapers (*Al-Hayat*, *Al-Ayyam* and *Al-Quds*) and was broadcast six times on television (Palestine Television and Watan Television) and 24 times on radio (Palestine Radio, Ajyal Radio, Ilm Radio and Hurriyah Radio).

69. The Commission sent letters to the print and broadcast media in the Gaza Strip requesting the publication or broadcast of its notices. However, the Commission received no reply and the notices were never disseminated. The media outlets to which letters were sent included Al-Aqsa Radio, Al-Aqsa Satellite Channel, *Al-Risalah* newspaper, *Filistin* newspaper and Al-Quds Radio. The Commission also requested rights organizations in the Gaza Strip to place the notices on their websites.

70. On 8 April 2010, the Commission organized a press conference in Ramallah that was attended by a number of journalists and media representatives. The purpose of the conference was to communicate with the public, and with the victims of violations in particular, in order to introduce the Commission and encourage people to lodge complaints concerning violations they had suffered or witnessed. The assembled journalists were updated on the Commission's activities and asked to disseminate information on the Commission's work to all Palestinians, who could then lodge complaints in respect of violations they had allegedly suffered. The Commission's President and members emphasized that the Commission was independent, impartial and unaffected by the current Palestinian political strife. They also emphasized that complainants would be protected and information kept confidential.

71. In order to emphasize its independence, impartiality and transparency, the Commission endeavoured to involve all parties by updating them on its work and welcoming suggestions. On 15 April 2010, responding to the suggestions of rights activists, the Commission met with members of the Palestinian Legislative Council from the Change and Reform Bloc affiliated with Hamas, in order to update them on the Commission's work and hear their proposals. The following Bloc members attended: Mr. Omar Abdul Raziq, Mr. Nasir Abdul Jawad, Mr. Mahmud Muslih, Ms. Muna Mansur, Ms. Samirah al-Halayqah, Mr. Hassan al-Burini and Mr. Abdul Rahman Zaydan. After the President had given an overview of the Commission's work, its working methods and its mandate, the participants commented on the extension of the Commission's mandate and the contacts that were being made by national figures with the de facto authority in the Gaza Strip with a view to the conduct of the investigation in that territory. The participants also stressed the importance of finding a solution to the issue of persons who had been dismissed from public positions, providing protection for complainants in order to encourage them to appear before the Commission, maintaining the Commission's impartiality and non-interference in its work.

72. Following up on its meeting with the Change and Reform Bloc, on 18 April 2010 the Commission met with the coordinators of other blocs and lists in the Palestinian Legislative Council. It also held a meeting with parliamentarians who had not attended the first meeting, including: Ms. Najat al-Astal, Mr. Qays Abdul Karim, Ms. Khalidah Jarar and Mr. Mustafa Barghouti. The participants commented on the need to conduct a serious and impartial investigation and the importance of presenting a consolidated national report and communicating with the de facto authority in the Gaza Strip with a view to the conduct of the investigation in that territory.

73. On 25 April 2010, the Technical Team travelled to Nablus and Hebron with a view to making preparations for the receipt of complaints from citizens in the north and the south. After placing notices in the local newspapers, the Commission, acting in coordination and cooperation with local rights groups, heard complaints in the branch offices of the Independent Commission for Human Rights.

74. In keeping with its strong desire to benefit from local, regional and international expertise, the Commission invited Mr. Bassiouni to serve as a consultant, with a view to benefiting from his expertise and enabling the Commission to produce a report that conforms with international standards. Mr. Bassiouni was subsequently appointed as a consultant to the Commission.

75. In accordance with the plan of work adopted by the Commission and its Technical Team, the Commission began to hear complaints from individuals and Palestinian rights organizations of rights violations allegedly committed by officials of the Palestinian National Authority in the West Bank and by the de facto authority in the Gaza Strip. From 4 to 18 May 2010, the Commission heard 105 complainants: 77 from the West Bank and 28 from the Gaza Strip. West Bank complainants were heard in Commission headquarters in Ramallah while complaints from the Gaza Strip were heard via videoconference because Commission members were not allowed to enter the Gaza Strip. Each complainant was heard privately in order to maintain confidentiality of information.

76. The Commission held 51 hearings concerning dismissal from public positions; 5 hearings concerning violations of press freedoms and violations committed by the security services of the Palestinian National Authority in the West Bank against journalists and the media; 4 hearings concerning the right to form associations; 16 hearings concerning detention and torture; and 1 hearing concerning violation of the right to assemble peacefully.

77. The Commission held 11 hearings concerning allegations of detention and torture committed by the security services of the de facto authority in the Gaza Strip. A further 17 hearings concerned killings.

78. The Commission also heard representatives of rights organizations, who presented information they had documented concerning violations that fell within the Commission's mandate. From 20 May to 6 June 2010, the Commission heard representatives of the following organizations: Al-Dameer Association for Human Rights, Al-Haq, Jerusalem Legal Aid and Human Rights Centre, Treatment and Rehabilitation Centre for Victims of Torture, Independent Commission for Human Rights, Palestinian Network of Non-Governmental Organizations, Democracy and Workers' Rights Centre and the Samir Kassir Foundation.

79. In order to ensure the comprehensiveness of the investigation, the Commission also heard representatives of official agencies, the most important of which was the Ministry of the Interior of the Palestinian National Authority. The Commission questioned those representatives about complaints of arbitrary detention, torture, dismissal from public positions, and closure of associations and interference in the selection of their boards of directors. On 9 June 2010, the Commission heard the Director of Public Relations and Non-Governmental Organization Affairs of the Ministry of the Interior.

80. On 15 June 2010, the Commission heard the Minister of the Interior. At that hearing, the Minister addressed complaints concerning detention, torture, and closure of associations and interference in the selection of their boards of directors. In respect of torture, the Minister stated that the practice of torture

had been halted completely. The Ministry had established a system to monitor and investigate the manner in which its officials performed their duties. He also stated that rights groups were permitted to visit detainees. In respect of the trial of civilians by military courts, the Minister said that the military courts had jurisdiction over charges of disturbing public order. The Minister said that court decisions were always respected and any delay in implementation was unintentional. The prohibition against visits by detainees' family members in the first few days of an investigation was consistent with the law. In respect of security checks for persons wishing to establish an association, the Minister said that such checks were performed in order to protect the interests of the associations and to determine whether the applicants were qualified to establish an association. The Ministry replied to applications for the establishment of an association within the legally mandated two-month period. The Minister categorically denied that the Ministry did not respect the decisions of the Supreme Court concerning associations and said that the Ministry had never appointed an outsider to an association's board of directors. With regard to violations of press freedoms, he said that any curtailment of journalists' freedom was for reasons unrelated to their profession.

81. With regard to the analysis and presentation of the violations investigated in the West Bank and the Gaza Strip, the Commission, after lengthy and in-depth discussions, decided that the format and presentation of its report should be somewhat different from the format and presentation used in reports submitted to the United Nations and other international organizations, in order to ease the burden of those reviewing the report and enable them to readily understand how the law views the violations that the Commission investigated. Each section of the present report therefore begins with an exposition of the relevant local laws, thereby giving the reader an understanding of how domestic law views the violations that were committed.

82. A number of obstacles and challenges prevented the Commission from fulfilling its mandate completely. From the outset, the Commission was confronted with a number of obstacles and challenges in its effort to conduct an investigation that is independent, credible and in conformity with international standards into serious violations of international humanitarian and international human rights. Among those challenges and obstacles were the following: The Commission was unable to enter the Gaza Strip in order to investigate violations of international humanitarian law allegedly committed by Palestinian armed groups, in particular the firing of homemade rockets against Israeli towns and settlements.

83. Also affecting the Commission's efforts to investigate human rights violations committed by Palestinian parties was the Commission's inability to enter the Gaza Strip in order to conduct investigations on the ground and hear the testimony and statements of victims and eyewitnesses.

84. Despite those obstacles, the Commission was able to hear approximately 28 complainants via videoconference. The complainants provided details of the violations they had suffered, thereby allowing the Commission to develop a credible picture of the serious human rights violations that the Fact-Finding Mission alleges were committed in the Gaza Strip by the de facto authority in that territory, as well as by its security services and armed groups.

85. The Commission wishes to emphasize that its unflagging efforts to enter the Gaza Strip left little time for it to fulfil its commitment to produce and submit its report by the established deadline. Because the Commission was forced to wait for a response to the entreaties that had been made by the League of Arab States and Egyptian officials seeking to persuade the de facto authority

in the Gaza Strip to allow the Commission to conduct its work in that territory, the dissemination of its notices and the receipt of complaints were delayed. As a result, the Commission was obliged to redouble its efforts in order to honour its commitment to submit its report by the established deadline.

86. The Commission is of the view that Palestinian citizens' lack of belief in the benefit of investigative commissions or the sincerity of their efforts was a grave impediment and a factor in the Commission's receiving fewer complaints and hearing less testimony than it should have. In addition to domestic commissions formed to investigate local violations, Palestinians have become accustomed to the establishment from time to time of international fact-finding commissions. Despite those efforts, there have never been any prosecutions or inquiries, leading citizens to doubt the benefit and importance of cooperating with such commissions. The Commission sensed this scepticism in the questions it faced from the public.

87. Fear of the security services in the West Bank and those of the de facto authority in the Gaza Strip deterred many victims from contacting the Commission. Their reluctance is particularly relevant given that many violations, including detention, torture and dismissal from employment, continue to occur.

88. The link between violations of human rights and freedoms, on the one hand, and the struggle and political differences between Fatah and Hamas, on the other, has resulted in a conviction among Palestinians that such violations cannot be halted or prevented without the reconciliation of the two sides.

89. There is a widespread belief that the work of investigative commissions and local human rights organizations will be fruitless as long as those political differences remain unresolved. The majority of the people believe that each side will continue to target the activists and supporters of the other side for as long as the crisis continues.

III. Violations in the form of rocket and mortar attacks on southern Israel attributed to Palestinian armed groups

90. Israeli occupation forces regularly carried out brief military strikes against the Gaza Strip in response to the firing into Israeli territory by Palestinian armed resistance groups of homemade rockets. Those attacks consisted of aerial bombardment, carried out by warplanes and helicopters, and artillery shelling. The Israeli occupation forces also occasionally made brief land forays against the Gaza Strip using tanks, armoured personnel carriers and heavily armed infantry.

91. Israel claims that the attacks against the Gaza Strip were necessary, and in self-defence in response to the firing of rockets and mortars by Palestinian armed resistance groups against Israeli territory and civilians.

92. It is unclear exactly how many rockets and mortars were fired by Palestinian armed resistance groups from the Gaza Strip. It should be understood that there are no reliable or verifiable estimates of the number of rockets and mortars that were fired, the locations from which they were fired, the targets they struck and whether they caused any casualties other than the deaths reported by Israel. The highest number of deaths reported was 13 over a period ranging from four to five years, including three or four military personnel, who are considered legitimate military targets under international humanitarian law. The reports of internal investigations conducted by the Israeli army have not yet been published and Israel has not conducted any independent fact-finding investigation.

93. Publicly available numbers vary according to their source. The Israeli Ministry of Foreign Affairs claims that, in 2008, Palestinian armed resistance groups fired 1,750 rockets and 1,528 mortars,[1] while the Israeli army spokesperson said that 1,755 mortars, 1,720 Qassam rockets and 75 Grad rockets[2] had been fired. In another report, the Israeli army spokesperson stated that 7,200 rockets had been fired against Israel since 2005, without specifying their type.[3] In an interview conducted on 7 July 2010, Israeli Prime Minister Benjamin Netanyahu told Larry King of the Cable News Network (CNN) that 6,000 rockets had been fired against Israel, presumably from 2005 to 2009, which is the same time period covered by the Israeli army report. It is worth noting that none of those sources indicated which targets had been struck. It is therefore possible that those rockets and mortars struck the desert, areas uninhabited by civilians, or military areas and their surroundings, which are considered legitimate military targets under international humanitarian law.

94. The report of the Fact-Finding Mission cites Israeli sources that claim 3,455 rockets and 3,742 mortars were fired into Israel from 2001 to mid-June 2008, without specifying the targets that were struck.[4] The Mission was unable to verify any of the Israeli claims, which were mentioned regularly in the media. The Mission's report cited the figures quoted in the media because Israel refused to cooperate with the Mission.

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[1] Israel Ministry of Foreign Affairs, "The Hamas terror war against Israel". Available at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Missile+fire+from+Gaza+on+Israeli+civilian+targets+Aug+2007.htm.

[2] Israel Defense Forces spokesperson's blog, "Rocket Statistics, 3 Jan 2009". Available at http://idfspokesperson.com/2009/01/03/rocket-statistics-3-jan-2009/.

[3] Ibid.

[4] Report of the United Nations Fact-Finding Mission on the Gaza Conflict, para. 183.

95. None of the above-mentioned figures were verified independently and impartially. The Commission was never in a position to verify the accuracy of the above-mentioned figure and is therefore unable to address this question in great detail in the present report.

96. The foregoing should not be interpreted to mean that the present report overlooks or diminishes the consequences of the firing of rockets and mortars against civilians, or that it denies the responsibility of persons who might have deliberately targeted civilians. The purpose of this part of the present report is to point out that the figures provided by Israel are imprecise and lack credibility, and that Israel has refused to verify those figures in an objective, professional and impartial manner.

97. As noted earlier, the Commission, which was established by a decree of the President of the Palestinian National Authority, was unable to exercise its mandate in the Gaza Strip from the time Hamas seized power by force in that territory. The Commission was therefore unable to conduct any investigations in the Gaza Strip regarding the use or firing of crude rockets[5] by Palestinian armed groups.

98. Nonetheless, should it be determined that Palestinian armed groups in fact deliberately targeted civilians, the Commission affirms that such an action would undoubtedly constitute a violation of international humanitarian law. The Palestinian National Authority has on many occasions called on armed resistance groups in the Gaza Strip to respect international law and exercise their right to self-defence in a manner that respects the moral and legal principles of the Palestinian resistance.

99. The Commission would therefore like to reiterate the fundamental point on which the present report is based: international humanitarian law strictly prohibits belligerent reprisals[6] in armed conflict, regardless of how such conflict is defined and, in particular, whether or not the conflict is international. The present report therefore rejects any justification of belligerent reprisals, whether committed by the Israelis or by Palestinian resistance groups.

100. In that connection, it has been established that, from 27 December 2008 to 18 January 2009, a number of rockets and mortars were fired by Palestinian armed resistance groups from the Gaza Strip. Those groups are not under the control of the Palestinian National Authority owing to the political division between the West Bank and the Gaza Strip. The projectiles struck Israel, allegedly resulting in three civilian deaths and the destruction of civilian property, the nature and extent of which has not been revealed.[7]

101. This part of the present report neither refutes nor confirms the figures noted in the Fact-Finding Mission's report because the Commission was not in a position to verify those figures. Nonetheless, for the purposes of the present report, the Commission accepts the figures noted in the Mission's report, which indicates that three persons were killed and some civilian property in southern Israel damaged.

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[5] The term "crude rockets" is used in Human Rights Council resolution S-9/1, which established the Fact-Finding Mission.

[6] See Kalshoven, Frits, *Belligerent Reprisals (International Humanitarian Law)*, Brill Academic Publishing, 2nd edition (5 June 2005). See also Bassiouni, Mahmoud Cherif, "Al-hurub wa al-azmat al-jadidah fi al-imtithal bi qanun al-niza'at al-musallahah min qibal al-fa'lin min ghayr al-duwal, *Sahifat al-qanun al-jina'i wa 'ilm al-jarimah*, vol. 98, pp. 712-820.

[7] See para. 73 above.

102. It is crucial to bear in mind that the inequality of the sides is one of the most important aspects of the conflict between the Palestinian armed resistance groups in the Gaza Strip and Israel, the occupying Power. The vast difference in their capacities is patently obvious and requires no proof. The only way the Palestinian resistance could respond to Israel's air force, helicopters, tanks, artillery and powerful infantry was to intermittently fire homemade rockets and mortars. The indiscriminate targeting of Palestinian civilians by the Israeli occupation forces, with their advanced combat weaponry and technology, which enables them to identify their targets precisely and distinguish civilian targets from and military targets with ease, is without doubt a violation of international humanitarian and international human rights law.

103. Civilian casualties and damage to civilian targets resulting from the firing of homemade rockets are primarily attributable to the unsophisticated nature of those rockets and the inability to aim them at specific targets. The preceding statement should in no way be interpreted as offering justification for any harm that was caused to civilians. Although each alleged incident of harm to civilians or civilian property needs to be investigated separately, the Commission will be unable to do so unless it can conduct on-site investigations.

104. Nonetheless, it should be recalled that, as a matter of principle, international humanitarian law provides that persons and property harmed by such attacks are entitled to reparations. The Commission supports this position and believes that the Palestinian National Authority will also agree, particularly if the two sides reach an agreement to compensate Palestinians and Israelis who were the victims of the military operations that took place from 27 December 2008 to 18 January 2009, as well as the victims of any other violations of international humanitarian and international human rights law that were perpetrated by the Israeli army or Palestinian armed resistance groups in the Gaza Strip.[8]

[8] See United Nations General Assembly resolution 60/147 of 21 March 2006, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law". See also Bassiouni, Mahmoud Cherif, "Al-i'tiraf al-duwaliy bi huquq al-dahaya", *Muraja'h li qanun huquq al-insan*, Vol. 6, pp. 79-203 (2006). It is worth noting that Islam addresses the question of the compensation of victims, or *diyyah*, in great detail and sets forth clear conditions in that regard. The Koran states: "O ye who believe! Retaliation is prescribed for you in the matter of the murdered; the freeman for the freeman, and the slave for the slave, and the female for the female. And for him who is forgiven somewhat by his (injured) brother, prosecution according to usage and payment unto him in kindness. This is an alleviation and a mercy from your Lord. He who transgresseth after this will have a painful doom. And there is life for you in retaliation, O men of understanding, that ye may ward off (evil)", *Al-Baqarah* (the Cow), verses 178 and 179.

IV. Detention and torture in the West Bank

105. Since 14 June 2007, when Hamas forcibly assumed power in the Gaza Strip, the Occupied Palestinian Territory has been administered by two bodies. The established Palestinian order, represented by the Palestinian National Authority and its official and security institutions, has continued to govern and administer the West Bank, while the Gaza Strip has been under the administration and control of Hamas and its subordinate or auxiliary military, regulatory and party forces.

106. During this phase and, specifically, from the beginning of the events known to Palestinians as the political division between the West Bank and the Gaza Strip, many rights and freedoms have been subject to restriction and violation by both parties, and arrest and detention have been widespread. It is claimed that this is in order to maintain security and order, protect the institutions and capacities of the existing authorities in the West Bank and the Gaza Strip and prevent confrontation and Palestinian internal violence from spreading from the Gaza Strip to the West Bank.

A. Bodies charged under national legislation with maintaining security in the West Bank

107. In order to clarify the nature of the violations related to arrest and torture, it is necessary to explain the character of the bodies charged with enforcing the law in the West Bank, as well as the nature and substance of the pertinent guarantees in national legislation.

1. Bodies charged under national legislation with maintaining security.

108. The legislative corpus that regulates the organization, powers and duties of the security forces in Palestine consists of a set of laws, the most important of which include: the Palestinian Basic Law as amended in 2003;[9] Law No. 8 (2005) concerning service in the security forces; General Intelligence (Law No. 17) of 2005; Decree-Law No. 11 (2007) on preventive security; Code of Criminal Procedure (Law No. 3 of 2001); Law No. 6 (1998) concerning reform and rehabilitation centres (prisons); Law No. 12 (1998) concerning public gatherings; the Penal Code (Law No. 16 of 1960), in force in the West Bank; and the Revolutionary Penal Code (1979) of the Palestine Liberation Organization.

109. The Law concerning service in the security forces, the General Intelligence Law and the Decree-Law on preventive security are held to be tantamount to basic legislation, defining the nature, authority and structure of the security forces, while other legislation regulates the roles and duties of those forces in the spheres in which they operate and the matters for which they are responsible.

110. The Law concerning service in the security forces, the General Intelligence Law and the Decree-Law on preventive security show that the Palestinian security forces comprise, in effect, the following:

[9] Article 84 of the Palestinian Basic Law stipulates: "The Security Forces and the Police are regular forces. They are the armed forces in the country. Their functions are limited to defending the country, serving the people, protecting society and maintaining public order, security and public morals. They shall perform their duties within the limits prescribed by law, with complete respect for rights and freedoms".

(a) The National Security Forces and the Palestine Liberation Army: Pursuant to the Law concerning service in the security forces, articles 3 and 7, these forces constitute a regular military body, which performs its functions and exercises its competences under the leadership of the Minister of National Security and under the command of the Commander-in-Chief, who issues the decisions necessary for the administration of its work and regulation of all its affairs, in conformity with the provisions of the Law and the by-laws issued on the basis thereof;

(b) The Internal Security Forces: Pursuant to the Law concerning service in the security forces, article 10, these forces constitute a regular security body, which performs its functions and exercises its competences under the leadership of the Minister of the Interior and under the command of the Director-General of Internal Security, who issues the decisions necessary for the administration of its work and regulation of all its affairs. In the West Bank, these forces consist of the Palestinian Police Force and the Palestinian Preventive Security Service;

(c) The General Intelligence Service: Pursuant to article 13 of the above-mentioned Law, this Service constitutes a regular security body, subordinate to the President of the Palestinian National Authority, which performs its functions and exercises its competences under the leadership and command of its head, who issues the decisions necessary for the administration of its work and regulation of all its affairs. The General Intelligence Service is the body officially charged with carrying out security activities and tasks outside the geographical borders of Palestine. It is required to carry out specific security tasks within the geographical borders of the State of Palestine in order to complete the implementation of measures and activities commenced outside the borders.

2. Nature and powers of bodies charged with enforcing the law.

111. The legislation in force regulates the powers of the security bodies charged with enforcing the law and intervening in order to maintain security and order. The powers and competences of these bodies are listed below.

(a) Palestinian Police Force

112. Pursuant to the provisions of Palestinian legislation and the interim Jordanian Public Security Law (No. 38 of 1965), the legal authority of which remains in force in the West Bank, the duties of the Palestinian Police Force can be defined as follows:

- To maintain order and security and protect life, honour and property;
- To prevent, detect and investigate crime, and arrest and bring to justice the perpetrators thereof;
- To administer prisons and guard prisoners;
- To implement laws and official, regulations and orders that comply with the law, and to support the public authorities in the performance of their duties in accordance with the law;
- To control and regulate road transport;
- To supervise public meetings and processions on roads and in public places.

(b) General Intelligence Service

113. The General Intelligence Law, article 9, defines the duties of this Service as follows:

- To take the measures necessary to prevent acts that may endanger the security and safety of Palestine and to take action against the perpetrators thereof in accordance with the law;
- To uncover external dangers which may jeopardize Palestinian national security in respect of espionage, conspiracy, sabotage or any other acts which may threaten the unity, security, independence and capacities of the homeland;
- To cooperate with similar agencies of friendly States in combating all acts which may threaten joint peace and security or any areas of external security, providing reciprocity is assured.

114. Article 10 of the Law defines the acts to which the stipulations of the preceding article apply:

1. Communication with a foreign Power with a view to committing a hostile act against Palestine;

2. Joining the army of a foreign country that is at war with Palestine;

3. Passing or helping to pass to a foreign Power a secret relating to the defence of Palestine in the military, political, economic or social sphere;

4. Any intentional act which may cause the death, serious physical injury or loss of liberty of any of the following:

(a) Monarchs or heads of State and their spouses, and ascendants or descendants thereof;

(b) Heirs apparent, deputy heads of State, prime ministers or ministers;

(c) Persons with public responsibilities or in public positions, if those acts are directed towards them in their capacity as such;

(d) Ambassadors or diplomats accredited to the State of Palestine;

5. Deliberate sabotage or damage to public property or private property used for public purposes and belonging to or under the control of a State having diplomatic or friendly relations with Palestine;

6. The manufacture, possession or acquisition of weapons, explosives or any harmful substances with the intention of committing any of the aforementioned acts in any State;

7. Any act of violence or threat, whatever the motive or purpose, which occurs in the course of an individual or collective criminal scheme and is designed to spread panic among people or frighten them by harming them or putting their lives, liberty or security at risk, by causing damage to the environment, public facilities or public property or occupying or seizing control thereof, or by surreptitiously transferring land or putting a national resource at risk.

115. Under the Law, the Service is equivalent to a judicial police force, with the power to conduct preliminary investigations into incidents allegedly committed by the person under arrest, to exercise oversight, to conduct investigations, inquiries and searches, to demand the seizure of property and detention of persons, to summon and interrogate individuals and hear their statements, to require anyone to surrender data, information or documents,

which may retain, and to take such measures as it deems necessary in accordance with the law.[10] The provisions of the Law affirm that the members of the Palestinian General Intelligence Service must, while carrying out their duties, respect all the rights and guarantees stipulated in Palestinian law and the relevant tenets of international law.

(c) Preventive Security Service

116. Article 2 of Decree-Law No. 11 (2007) on preventive security[11] defines the Preventive Security Service as a regular security directorate-general within the Internal Security Forces, subordinate to the competent ministry and operating in the field of security. It has two temporary headquarters, in the cities of Ramallah and Gaza, and may open subdirectorates in other cities.

117. Article 4 of the Decree-Law determines the conditions of appointment of the Director of Preventive Security, stipulating that the Director-General and his deputy are to be appointed by decree of the President of the Palestinian National Authority, pursuant to a decision by the competent minister, the nomination of the Director-General of Internal Security and the recommendation of the Committee of Officers. The Director-General and his deputy shall swear the legal oath before the President before commencing work.

118. Article 5 of the Decree-Law stipulates the following:

1. The Director-General shall assume responsibility for supervising the work of the Directorate-General of Preventive Security and its staff and for forming the committees necessary for the proper conduct of work. The Director-General may delegate some of his powers to his deputy.

2. The Director-General shall be answerable to the competent minister and the Director-General of Internal Security for his work and for maintaining the confidentiality of the activities of the Directorate-General of Preventive Security.

119. Article 6 of the Decree-Law determines the duties of this body, stipulating that, without contravening the laws in force, the Directorate-General of Preventive Security shall be charged with the following:

1. Working to protect Palestinian national security;

2. Following up on crimes which threaten the internal security of the Palestinian National Authority and/or crimes committed against it, and striving to prevent their occurrence;

3. Uncovering crimes which target Government departments, public bodies and organizations and their employees.

[10] General Intelligence Law, articles 12 and 14.

[11] Given the inactivity of the Legislative Council and its inability to convene and exercise its powers because of the schism between the West Bank and Gaza Strip, the Palestinian President has begun to exercise the powers of the legislature by issuing temporary resolutions having the force of law, in order to close the legislative gap resulting from that inactivity, pursuant to the Palestinian Basic Law, article 43, which affirms: "The President of the National Authority shall have the right, in cases of necessity that cannot be delayed, and when the Legislative Council is not in session, to issue decrees that have the power of law. These decrees shall be presented to the Legislative Council in the first session convened after their issuance; otherwise they will cease to have the power of law. If these decrees are presented to the Legislative Council, as mentioned above, but are not approved by the latter, then they shall cease to have the power of law".

120. Article 7 of the same Decree-Law treats this force as equivalent to a judicial police force, stipulating that the officers and non-commissioned officers of the Preventive Security Service shall, to facilitate the performance of the preventive security functions set forth under the Decree-Law, have the capacity of judicial police.

121. Article 8 of the Decree-Law requires the members and administration of the force to respect rights, affirming the commitment of the Directorate-General of Preventive Security to the rights, freedoms and guarantees stipulated in Palestinian law and international instruments and treaties.

122. Article 9 of the Decree-Law grants the Preventive Security Service the power to establish detention centres, to be determined by the competent minister, namely, the Minister of the Interior, in coordination with the Director-General of Preventive Security. The Minister of Justice and the Public Prosecutor is to be informed of the status of such centres and of any changes thereto.

B. Limits, scope of and rules for detention under Palestinian legislation:

123. Palestinian legislation, specifically the Palestinian Basic Law as amended in 2003 and Law No. 3 (2001) concerning criminal procedures, regulates the rules and guarantees relating to arrest and detention.

1. Rules for detention and search provided for in the Palestinian Basic Law

124. The Palestinian Basic Law as amended in 2003, which is tantamount to the constitution of the Palestinian National Authority, recognizes a set of restrictions and guarantees which must be respected and observed by those charged with enforcing the law when carrying out arrest and detention procedures. Possibly the most important guarantees provided by the Palestinian Basic Law are set forth in article 11, which affirms the following:

1. Personal freedom is a natural right which is guaranteed and may not be violated;

2. No person may be arrested, searched, imprisoned or have his liberty or freedom of movement restricted in any way except by judicial order, in accordance with the provisions of the law. The law shall specify the period of preventive custody. Detention or imprisonment shall only be permitted in places that are subject to the laws on the organization of prisons.

125. Article 12 of the Basic Law stipulates the following: "Every arrested or detained person shall be informed of the reason for their arrest or detention. They shall be promptly informed, in a language they understand, of the nature of the charges brought against them. They shall have the right to contact a lawyer and to be tried before a court without delay".

126. Torture is forbidden. Article 13 of the Basic Law affirms as follows:

1. No person may be subjected to coercion or torture. Indictees and all persons deprived of their freedom shall receive appropriate treatment.

2. All statements or confessions obtained through violation of the provisions contained in paragraph 1 of this article shall be considered null and void.

127. Article 17 of the Basic Law stipulates: "Homes shall be inviolable; they shall not be subject to surveillance, broken into or searched, except with a valid judicial order and in accordance with the provisions of the law. Any conclusions drawn as a result of a violation of this article shall be considered invalid. Individuals who are wronged by such a violation shall be entitled to fair compensation, guaranteed by the Palestinian National Authority".

128. The right to litigation is affirmed. Article 30 of the Basic Law stipulates as follows:

1. Litigation is a protected and guaranteed right for all people, and all Palestinians have the right to seek redress through the judicial system. Litigation procedures shall be regulated by law and shall ensure prompt settlement of cases.

2. Laws may not contain any provisions that provide immunity for any administrative decision or action from judicial review.

3. Judicial error shall entail restitution by the National Authority. The conditions and manner of such restitution shall be regulated by law.

129. There shall be no statute of limitations on crimes that violate rights and freedoms. Article 32 of the Basic Law stipulates as follows:

> "Any violation of a personal freedom or of the sanctity of a person's private life or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations shall not be subject to any statute of limitations. The National Authority shall ensure fair restitution for any such harm suffered".

2. Rules for detention and search in national legislation and international instruments

130. To supplement the guarantees provided by the Palestinian Basic Law, Palestinian legislation has followed the example of international human rights instruments and adopted a set of guarantees and rules aimed at ensuring respect for the rights and dignity of persons under arrest and investigation.

(a) Rules for detention and investigation set forth in the Code of Criminal Procedure (Law No. 3 of 2001)

131. The articles of this Law contain a set of guarantees, the most important of which include the following:

- Article 29, affirming that individuals may be arrested or imprisoned only pursuant to an order issued by the competent authority. It stipulates that no person may be arrested or imprisoned except by order of the competent authority as set forth in law. He must be treated in a manner that preserves his dignity and shall not be physically or morally harmed.
- Article 34, affirming that the law enforcement officials must take statements from arrested individuals immediately. If there is no justification for their release, they must be transferred to the competent deputy public prosecutor within 24 hours.
- Article 39, affirming that homes may be entered and searched only with a warrant issued by the Office of the Public Prosecutor, or in the presence of a member of the Office. The resident of the home must have been accused of perpetrating or being an accessory to a crime or offence. Alternatively, there should be strong evidence that the individual is

concealing objects connected with a crime. The article further affirms that the search warrant must be substantiated and made out in the name of one or more law enforcement officials.

- Article 48, affirming that the competent authorities may not enter a house without a warrant except in the following cases:

1. To request assistance from inside the house;

2. In the event of fire or drowning;

3. If a crime is being committed *in flagrante*;

4. If a person who must be arrested or who has escaped from a place in which he was lawfully detained is being pursued.

- The Law defines the Public Prosecutor's power to investigate and in article 55 stipulates:

1. The Public Prosecutor shall have exclusive competence to investigate crimes and take action in respect thereof.

2. The Public Prosecutor or competent deputy public prosecutor may delegate a competent member of the judicial police to carry out an investigation in a specific case, other than the interrogation of the accused in felony cases.

3. Powers shall not be comprehensively delegated.

4. The person to whom authority has been delegated shall, to the extent permitted, enjoy all the powers vested in the deputy Public Prosecutor.

- The Code of Criminal Procedure, article 99, requires the deputy public prosecutor to conduct a physical inspection of the suspect prior to questioning, to document any visible injuries and establish their cause.

- Article 102 of the Law affirms:

1. Suspects are entitled to legal representation during the prosecution.

2. During the investigation, counsel may speak only with the permission of the deputy public prosecutor. If permission is not given, that must be noted in the record.

3. Counsel shall be allowed to study the case prior to the prosecution in respect of matters concerning his client.

4. Counsel may submit a memorandum containing his observations.

- Article 103 of the Law stipulates that the deputy public prosecutor may, in felony cases and in the interests of expediting the investigation, decide to prohibit communication with the suspect for a period of not more than 10 days, renewable only once. This prohibition shall not apply to the counsel of the suspect, who may communicate with his client at any time he wishes, without restriction or supervision.

- Article 108 of the Law stipulates that the deputy public prosecutor may detain the individual after prosecution for a period of 48 hours. The period of detention may be extended by the court in accordance with the Law. The law enforcement official must immediately convey the detainee to the police station. Where there is no warrant, the prison official who takes the detainee into custody must immediately ascertain the reasons for the detention. Such custody shall in no event exceed 24 hours, and the Office of the Public Prosecutor shall to be notified at once.

- Article 125 of the Law stipulates that individuals may be detained or imprisoned only in a prison or in a legally specified place of detention. Prisoners may be taken in only pursuant to an order from the competent authority, and may not be detained beyond the period specified in the order. If it is decided that a detainee should be released on bail, the official responsible or the director of the prison shall release him, provided that he has not also been arrested or detained on some other charge.

- Article 126 of the Law requires that several authorities to inspect the prisons. It stipulates that the Office of the Public Prosecutor and the heads of the courts of first instance and Courts of Appeal shall inspect prisons and other places of detention under their jurisdiction in order to ensure that no person is unlawfully imprisoned or detained. They shall examine and make copies of the prison records, detention orders and arrest warrants. They shall make contact with inmates in order to hear any grievances. Directors and officials shall offer them every assistance in obtaining the information sought.

(b) Rules for detention in accordance with international instruments

132. The Universal Declaration of Human Rights, article 3, affirms that everyone has the right to life, liberty and security of person, while article 5 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and article 9 stipulates that no one shall be subjected to arbitrary arrest, detention or exile.

133. The same guarantees are stipulated in and provided for by the International Covenant on Civil and Political Rights, article 7 of which states, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation". Article 9 of the Covenant affirms:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

134. Article 10 of the Covenant provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

135. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly and annexed to resolution 43/173 of 9 December 1988, sets forth the rules for arrest and investigation.

136. The most important principles and rules governing arrest and investigation established and affirmed in the Body of Principles are perhaps the following:

- All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person;
- Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose;
- Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority;
- No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment;
- States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints;
- Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons;
- The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law;
- A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law;
- Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights;
- Communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days;
- A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it;

- A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations;

- It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person;

- A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge;

- Places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment;

- A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful;

- Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation;

- A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

C. Human rights violations committed by Palestinian security services at the time of arrest and detention

137. In order to obtain an idea of the nature, scale and substance of the violations alleged in the Goldstone report, the Commission contacted all the Palestinian human rights institutions that have, in its opinion, reliably observed and documented the violations in the West Bank, including Al-Haq, Al-Dameer

Association for Human Rights, the Independent Commission for Human Rights, the Jerusalem Legal Aid Centre and the Treatment and Rehabilitation Centre for Victims of Torture, to provide it with any information that had been collected and documented by those institutions, in addition to their reports, statements and contributions.

138. All the reports, testimonies and statements received by the Commission from those organizations are in agreement that West Bank law-enforcement agents committed violations in the performance of arrests and detentions. Reports and statements noted that the security services in the West Bank, in carrying out arrest, detention and investigation procedures, had committed a number of violations, which may be summarized as follows:

1. Arrests were linked to the Palestinian political situation, inasmuch in the West Bank they targeted persons belonging to, closely associated with or supportive of Hamas, and others favoured by political groups or forces allied with or sympathetic to Hamas;

2. Law-enforcement officers in the West Bank security services failed to respect due legal process, in the majority of cases of arrest and detention;

3. Detainees were mistreated and subjected to cruelty;

4. Detainees were not referred to the Office of the Public Prosecutor within the statutory time limits prescribed by the Palestinian Code of Criminal Procedure.

5. Civilian detainees were brought before military courts;

6. The security services disregarded and failed to implement release orders issued by the courts, and in some cases they were duplicitous in the execution of such orders in that they only gave the appearance of releasing detainees whose discharge had been ordered;

7. Detainees were subjected to torture and other forms of humiliating and degrading treatment as a means of extracting from them confessions regarding acts ascribed to them or confessions relating to others.

1. Complaints received by the Commission concerning detention-related violations:

139. The Commission received from human rights organizations, parliamentary blocs, relatives of detained persons and released detainees some 165 complaints concerning arrest and detention-related human rights violations by law-enforcement officers and Palestinian security services in the West Bank, in addition to directly receiving 85 personal complaints from individuals in the West Bank.[12]

140. After reviewing and studying the complaints and their annexes, the Commission found that the claims relating to violations of human rights and freedoms by law-enforcement officers in the West Bank in connection with arrests and detention were justified. The Commission also confirmed the statements of persons who gave testimony at the hearings it conducted in the

[12] Lists of all the complaints, which have been documented by the Commission, are attached hereto.

West Bank[13] regarding the perpetration of the following violations by the authorities responsible for carrying out arrests and detentions in the West Bank:

(a) Disregard on the part of the security services for the rules of jurisdiction regarding authority to detain and arrest:

141. It is evident from the content of the complaints and the hearings held by the Commission that the Palestinian Military Intelligence Service shared the exercise of the authority to detain and arrest with the police and the General Intelligence and Preventive Security Services. Indeed, the Military Intelligence Service detained, investigated and held individuals at its headquarters,[14] although under the law it has no authority to arrest anyone other than military personnel; hence it is not empowered to apprehend, detain or arrest civilians.

142. All the security agencies, whether or not they are legally authorized to make arrests, failed to respect Palestinian Code of Criminal Procedure Law (No. 3 of 2001), which provides that no arrest warrant may be executed without a court order. According to statements documented by the Commission in every one of the hearings it conducted, no arrest warrant issued by the competent judicial authorities had been produced. Rather, arrests had been carried out forcibly by taking the wanted person to security headquarters, whether from his home, his place of work or a public thoroughfare; or else the person was summoned by telephone to a meeting with the security body, whereupon he was immediately apprehended and arrested.[15]

143. The Palestinian Code of Criminal Procedure, article 125, explicitly provides that detainees and prisoners may only be housed in specially designated detention or imprisonment facilities, namely, reform and rehabilitation centres or the arrest and detention centres of such properly authorized agencies as the Palestinian General Intelligence Service or the Preventive Security Service. The Palestinian security services failed to abide by that provision and detained scores of arrested persons at Military Intelligence headquarters, even though those headquarters are not, according to Palestinian law, designated for the arrest and detention of civilians.

144. When entering and searching homes, the security services did not respect the requirement to show judicial orders. Numerous homes were broken into and searched without any such order being shown, which constitutes a clear violation of the sanctity of those homes.

(b) Use of violence, mistreatment, beating and degradation at the time of arrest:

145. In addition to resorting to force and violence, the security services frequently carried out arrests in a degrading and inhuman manner. As shown by the statements obtained by the Commission from arrested persons or their relatives concerning the facts surrounding arrest, the Palestinian security services in general did not comply with the rules and criteria governing arrests,

[13] The Commission heard the testimony of 22 persons in connection with complaints relating to detention.

[14] Eleven persons testified in hearings that they or their relatives had been detained and arrested by the Military Intelligence Service: statements documented by the Commission and registered as Nos. S-D-3/2010, S-D-4/2010, ayn-t-D-11/2010, ayn-t-D-12/2010, ayn-t-D-13/2010, ayn-t-D-14/2010, ayn-t-D-15/2010, ayn-t-D-17/2010, ayn-t-D-21/2010, ayn-t-D-25/2010 and ayn-t-D-26/2010.

[15] This situation was corroborated by most of the statements documented by the Commission, including the following: statements documented by the Commission and registered as Nos. S/D-4/2010, S/D-3/2010, ayn-t-D-12/2010, ayn-t-D-21/2010, ayn-t-D-23/2010 and ayn-t-D-25/2010.

in particular those relating to proper treatment and the avoidance of beating, degradation and recourse to violence.

(c) Violation of the legal provisions governing the duration of custody by those services:

146. As previously mentioned, in ordinary circumstances Palestinian law allows the authorized agency to detain and arrest persons for a period of 24 hours, after which the arrested person must immediately be released or transferred to the Office of the Public Prosecutor or the competent court with a view to a decision on his status being made.

147. It is worth noting that, in the majority of cases of arrest which it documented, the Commission found that the security services ignored those time limits and failed to observe binding legal provisions by detaining many persons for periods longer than those provided for by law; moreover, none of the detainees were transferred to the Office of the Public Prosecutor or the competent court.

(d) Failure to comply with court order regarding the release of detainees:

148. Eight complainants out of the total of 22 persons heard by the Commission stated that the security services (Preventive Security, General Intelligence and Military Intelligence) did not execute some of the court orders requiring the discharge of detainees or their release on bail; despite the court orders, those persons continued to be detained. In other cases deception was practised with regard to court orders requiring the release of detainees: the decision of the court was executed by the security service, only for the person to be reapprehended and detained by another security service. Some security services carried out the order to release the detainee and then rearrested him as soon as he left security headquarters, on the pretext that he had committed another delinquent act; the detainee was thus rearrested by the same agency on a different charge.

149. Other means of avoiding the implementation of court orders involved releasing the person, then rearresting him immediately under a new arrest warrant issued by the Military Prosecutor or the head of the military judiciary.

150. Some of the statements of complainants who were heard in this connection serve to illustrate the manner in which the security services dealt with court decisions, including those of the Supreme Court. One of the victims testified: "... on 11 September 2008, the Supreme Court ordered my release, and immediately upon the receipt of that order, I was indeed released. As I proceeded out of the door of the place of arrest, a civilian car approached me and one of the passengers pulled out a General Intelligence card and asked me to enter the car. It drove around for 15 minutes, after which I was taken to General Intelligence headquarters, where I was asked to hand over my personal belongings and placed under arrest for a period of eight days. I was released after signing an undertaking to obey the law ... I was detained at the Preventive Security Service ... On 15 July 2009, an order for my release was issued by the Supreme Court and I was released on 26 July 2009 ...".[16]

[16] Statement documented by the Commission and registered as No. S/D-4/2010.

151. According to another victim: "... I had filed an appeal against the decision to arrest me with the Supreme Court and, on 4 October 2009, the Court ruled that I should be released. At the prison door, they took me back in again ...".[17]

152. Yet another victim stated: "... On 8 April 2009, my husband was arrested by Military Intelligence and taken to Al-Junaid Prison in Nablus ... On 22 November 2009, I obtained an order for his release from the Supreme Court, but the Court's order has not been executed to this day ... After the order for my husband's release was issued by the Supreme Court, he was handed over to the military court, which sentenced him to four years on 19 January 2010 ...".[18]

153. In a further statement concerning the manner in which the security services dealt with judgements of the civil courts, the complainant testified as follows: "... On 2 January 2009, I was placed under arrest in the Military Intelligence Service in the town of Salfit. My detention lasted 13 months ... I filed an appeal with the Supreme Court, which ruled that I should be released. Three months after the issuance of the decision by the Court, I was released ...".[19]

154. In yet another statement relating to the deceitful ways in which the security services circumvented court decisions, the complainant testified as follows: "... I obtained a Supreme Court order for my release on 2 December 2009, but Preventive Security did not comply by releasing me. It should be pointed out that I delivered the order to Preventive Security myself, inasmuch as that is where I was detained. Military Intelligence transferred me to General Intelligence, and when General Intelligence reviewed the matter with a view to executing the decision, they informed me that the decision did not concern them because it was addressed to Preventive Security, and not to them ...".[20]

(e) Torture, beatings and ill-treatment during interrogation and investigation:

155. It is evident from the statements heard by the Commission that many persons were subjected to beatings, torture and degrading treatment at various stages of their detention. By placing pressure on them, it was hoped to extract information or induce them to confess to acts or statements ascribed to them or to others.

156. Furthermore, it is clear from all the statements obtained by the Commission that the security services used a number of methods of exerting pressure on detainees in order to extract information or confessions from them, including:

- Severe beatings in the form of blows, kicks and slaps;
- Collective beating of the detainee, where several individuals take part in beatings and other acts of aggression;
- Whipping with water hoses;
- *Shabah*, where the detainee's hands are tied behind him and pulled up by fastening the bonds to a door, window or other object, so that the mashbuh, or the person subjected to this form of torture, remains virtually suspended in the air, a process that may last for periods of varying

[17] Statement documented by the Commission and registered as No. ayn-t-D-12/2010.
[18] Statement documented by the Commission and registered as No. ayn-t-D-11/2010.
[19] Statement documented by the Commission and registered as No. ayn-t-D-15/2010.
[20] Statement documented by the Commission and registered as No. ayn-t-D-21/2010.

duration, even several days in succession, the person being granted brief periods of respite;

- Curses, contemptuous remarks and humiliation;
- Threats and intimidation;
- Detention in cramped cells measuring roughly 1 metre by 2 to 3 metres;
- Withholding of blankets and bedding;
- Questioning for many hours at night, sometimes until daybreak;
- Sleep deprivation;
- Refusal to provide medical treatment and care;
- Beatings on the soles of the feet with sticks, done by shackling and raising the detainee's feet, whereupon he is beaten with sticks or clubs for variable lengths of time, then required to walk in order to obscure the blood congestion resulting from the beating.

157. As an indication of the harsh treatment and torture meted out to detainees, one complainant stated the following: "... On 31 January 2009 I was taken into custody by the Preventive Security service in Hebron and remained in detention, I believe, until 26 February 2009. For nearly 18 days I remained in a cell without any bedding, not even a blanket, and was subjected to torture, which included *shabah* on the door, and was not permitted to sleep for five days. The investigation focused on my activity at the university ... It should be mentioned that, approximately a week before my arrest, I began to receive treatment from a doctor who specialized in rheumatism, because it appeared that I suffered from vitamin B12 deficiency ... The treatment prescribed was in the form of injections, at the rate of one injection per day over three months. During my detention I was not able to take the injections, despite the fact that I informed them that I needed them. I was permitted to receive the injections during the last three days ... When they sent a doctor to examine my condition at the time of my arrest, it was obvious to the doctor that I needed to receive the treatment, but the investigator informed me that he wanted me to die right there and that there would be no treatment. He haggled with me over confession in exchange for treatment ... The last arrest, which was on 6 September 2009 and lasted until 12 September 2009, was at the General Intelligence Service in Hebron ... On the occasion of that arrest I was subjected to torture, which included *shabah* on a chair and the door and beatings as well as other types of torture, one of which consisted of placing a snake on my body, while they repeatedly told me that the snake was hungry and needed food. However, I was not harmed by the snake. In addition, there was a new torture method, which consisted in lowering the upper half of my body into a well in the *shabah* yard at General Intelligence headquarters and threatening to let me fall into the well if I did not confess ...".[21]

158. In another statement, one of the complainants testified to the Commission as follows: "... I was taken into custody by Preventive Security ... The moment I went in to the investigator, he asked me why I had not saluted him, and I replied that I was in a confused state of mind. And because I had not saluted him, he said to me, 'I'll show you!' and called in a soldier who held me firmly from behind while blows from the investigator rained down on me. He then escorted me to the torture yard, where the investigator fell upon me, beating me

[21] Statement documented by the Commission and registered as No. ayn-t-D-26/2010.

from in front and behind, before concentrating on my lower body, until I fell to the ground, bleeding heavily from my mouth and nose and almost fainting. They told me to wash my face so that I would regain consciousness. After that, they put me back in the *shabah* standing position ... While I was being tortured I witnessed them torturing other detainees ... Between solitary confinement cells and *shabah*, the torture continued for a month. After beating me they made me stand on my feet for four days. Throughout my detention I rested only at prayer and mealtimes ...".[22]

159. Another statement contained the following: "...On 1 March 2009 I was taken into custody at General Intelligence, on al-Irsal Street in the city of Ramallah ... The investigator called for a soldier and told him, 'Take "Ahmad" to his private suite'. He took me to a dark cell without any bed or mattress, which measured 1 by 2 metres, where I remained until the following day, sleeping on the tile floor; the weather was freezing ... A soldier then took me from the cell and placed iron handcuffs on my hands, fastening them behind my back. He then tied them to a window on the wall and raised my hands until they were tight against the end of the window. I was in a hanging position, the tips of my toes touching my shoes. They pushed the shoes out from under my feet so that I remained suspended, a situation that continued from Monday to Thursday ... On the following Saturday, after the Friday break, they threw me on the ground, place a piece of cloth in my mouth, blindfolded me with my hands behind me, bound my feet to a Kalashnikov and brought a rigid plastic hose. Two of them raised my feet and the officer began to beat my feet with the hose after removing my shoes. Five persons took turns performing this bastinado until they grew tired. They poured water on the ground and asked me to jump barefoot ... I could not jump because my feet had turned blue, and because I was unable to jump, they began to beat me all over my body ... Another time they subjected me to the same torture for more than two hours and as a result of the swelling in my feet, my toenails fell out on the ground. Things continued this way for a period of 20 to 25 days ... One night a soldier named 'Rami' continued to beat me on the swollen area all night ...".[23]

160. The testimony of another complainant included the following: "... On 2 April 2009, I was arrested at a private school by the name of 'Akadimiyat al-qur'an al-karim' (Academy of the Holy Koran), which belongs to the Nablus Zakat Committee, where I was working, and taken to Jenin prison, where I was arrested by Preventive Security. On the occasion of that arrest I was subjected to torture consisting in continuous *shabah*, sleep deprivation and severe beating, which resulted in a toe on my right foot being broken ...".[24]

161. In another statement the complainant reported: "... In July 2009, they put me directly into a cell without questioning me; then they subjected me, blindfolded, to *shabah* and took turns beating me with a hose about seven times. I shouted to them that I was a journalist and should not be treated in that manner, whereupon they struck me in the face with the hose. I reacted by getting free of the bonds and pulled the cover off my head. The person who had been beating me stepped back and called the officer, and at that moment I saw around me some 10 people who were being tortured and subjected to *shabah*. At that point two officers arrived, and they threw me to the ground and beat me. I kept screaming until the interrogation chief arrived. He also slapped me and

[22] Statement documented by the Commission and registered as No. ayn-t-D-23/2010.
[23] Statement documented by the Commission and registered as No. ayn-t-D-22/2010.
[24] Statement documented by the Commission and registered as No. ayn-t-D-17/2010.

ordered me not to argue and keep quiet, then tied me and subjected me to *shabah* again ...".[25]

162. One of the important testimonies obtained by the Commission concerning the conditions of arrest and detention and the nature of the practices by members of the security services with regard to detainees is contained in the statement of Mr. Mahmud Sahwail, Director of the Treatment and Rehabilitation Centre for Victims of Torture, a human rights organization concerned with studying and documenting torture. He stated that his institution had carried out a field survey in a sample of 50 detainees who had been released. After all the individuals in the sample had answered all the questions addressed to them, the Centre arrived at the following set of indicators and conclusions:[26]

- 8.9 per cent reported that, at the time of arrest, they had been beaten in front of members of their families;
- 37.8 per cent of the sample reported that they had been subjected to humiliation, curses and threats while being transported to the places of arrest and detention;
- Most of the persons in the sample reported that they had been arrested in the middle of the night, which had made their family members shocked and fearful;
- 86 per cent of the sample reported that they had been released after being investigated, but without any regard for the time limits established by law for arrest and detention, which means that the criterion for the release of detainees was not the statutory limits defined by the laws governing the arrest, detention, interrogation and investigation of persons. What in fact determined the duration of such detention or arrest was the length of time required for the investigator to obtain a confession;
- Based on the statements of the survey subjects, the rate at which torture was practised was highest in the Military Intelligence Service, followed by the General Intelligence Service and the Preventive Security Service. However, it should be noted that, instead of focusing on quantity and severity, the Preventive Security Service was more selective in its use of torture, employing types and methods of torture and pressure that would lead to a rapid confession and admission of the charges attributed to the person.

163. The forms of torture used by the persons concerned included the following:

- Violent beating with truncheons;
- Caning for prolonged periods;
- Torture using water and jets of hot and cold air;
- Burning with cigarettes;
- Strangulation.

The main forms of psychological torture to which the detainees were subjected comprised:

- Solitary confinement;

[25] Statement documented by the Commission and registered as No. S-D-5/2010.
[26] Statement documented by the Commission and registered as No. m/D-32/2010.

- Sleep deprivation;
- Denial of drinking water;
- Denial of access to toilet facilities;
- Being kept in ignorance of time and place;
- Denial of medical treatment;
- Prohibition of visits.

164. Perhaps the most serious consequence of the subjection of the detainees to torture and other forms of harsh and degrading treatment is the fact that 48 per cent of those who were questioned said that they wanted to take revenge on their jailers and that 77 per cent of them stated that they felt hatred and rage because of the indignity and ill-treatment to which they had been subjected.

D. Opinion of the Commission on the arrest and detention operations in the West Bank

165. It is clear from the facts documented by the Commission on arrests that were made in the West Bank that many involved assaults and violations by the agencies charged with implementing the law, and were contrary to the rules that should be respected and applied in the event of arrest or detention. Set forth below are perhaps the most important of the points identified by the Commission from the testimonies that it documented subsequent to the hearings it convened and from the reports and data that it obtained from Palestinian human rights institutions.

166. The positions of the Palestinian civil society institutions and the Palestinian National Authority differ: all the institutions heard by the Commission took the view that the arrest campaigns being carried out by the security agencies involved arbitrary arrests that were aimed at all sympathizers with Hamas and other Islamic movements. The official agencies deny that allegation and reject any suggestion that persons were arrested on grounds of political affiliation; they claim that all those detained in the West Bank were persons suspected of having committed acts that were illegal or prejudicial to public safety and public order.

167. On the basis of the hearings that it held and of the reports and documents that it obtained, the Commission considers that the arrests of Hamas sympathizers and other persons made by the Palestinian security agencies were a response to the political differences between Fatah and Hamas, because the majority of those arrests were based on considerations of political affiliation and can consequently be characterized as illegal.

168. It is evident from all the complaints filed and the hearings convened by the Commission that most of the complaints of torture, ill-treatment and beating concerned the Preventive Security Service, the General Intelligence Service and, in particular, the Military Intelligence Service.

169. It is clear that the Office of the Public Prosecutor was remiss in performing the role entrusted to it by law, because it was incumbent on the members of the Office, under article 126 of the Palestinian Code of Criminal Procedure (No. 3 of 2001), to investigate prisons and places of detention within their jurisdiction in order to verify that they held no illegally detained inmates. They are also responsible for consulting the records of such centres and arrest and detention warrants, taking copies thereof, and contacting any detainees or

other inmates and hearing any grievances that might be submitted to them. Moreover, prison directors and wardens are obliged to offer them every assistance in obtaining the information sought.

170. Consequently, it was incumbent on the Office of the Public Prosecutor not only to intervene in order to prevent any arrest or detention that fell outside the remit of the prisons, but also to initiate criminal proceedings against anyone in breach of the legal requirements. It has also been established that the Office of the Public Prosecutor failed to intervene in order to prevent members of the security apparatus, in particular the Military Intelligence Service, from usurping the powers of the agencies which, under the law, had the status of judicial police, particularly given that the Palestinian security apparatus, under Palestinian military code of criminal procedure, does not have the status of judicial police in cases involving military personnel.

171. For this reason, the Military Intelligence Service does not have the authority to act in the capacity of judicial police, whether the matter concerns arrest or detention or the entering or searching of homes.

172. It is clear that violations of human dignity, including treatment during arrest, beating, abuse, humiliation and the subjection of arrested persons to torture or to physical or psychological pressure in order to obtain information from them or to force them to confess and admit the charges brought against them were not isolated cases of individual conduct in the detention and investigation centres of the preventive security apparatus, the General Intelligence Service and the Military Intelligence Service.

173. The fact that such practices occurred in a number of arrest and detention centres in the West Bank suggests that there were clear breaches by the security apparatus of the provisions of the Palestinian Basic Law, article 13, which affirms that no person shall be subject to duress or torture and that indictees and all persons deprived of their freedom shall receive proper treatment.

174. The security agencies successively rearrested the same person, who was not finally released until the last agency had arrested and detained him. This implies, on the one hand, a lack of effective coordination between the security agencies and, on the other, a lack of respect by the security agencies for the decisions of other agencies to release detainees.

175. The repeated arrest of the same person by the same agency means that there is no real guarantee of the protection of the individual. This in turn implies a lack of effective supervision of the agency's performance by the authorities and other agencies.

176. In the view of the Commission, this constitutes a serious breach of article 11 of the Palestinian Basic Law as amended in 2003, which affirms that personal freedom is a natural right that is guaranteed and protected, and that it is unlawful to arrest, search, imprison or restrict the liberty or freedom of movement of any person, except by judicial order, in accordance with the provisions of law. The law shall specify the period of preventive custody. It also provides that imprisonment or detention shall only be permitted in places that are subject to the laws on the organization of prisons.

Arrest and detention of civilians by the Office of the Military Prosecutor and the military judiciary

177. It is beyond question that the extension of the purview of the military judiciary to include civilians is a clear and blatant violation of the prerogatives of the civilian judiciary. In addition, it deprives civilians of the right to appear

before a civilian judge, a right that is guaranteed and affirmed by the Palestinian Basic Law, article 30, which states that litigation is a protected and guaranteed right for all people, and all Palestinians have the right to seek redress through the judicial system.

178. Similarly the extension of the purview of the military judiciary to include civilians is clearly prejudicial to the powers and functions of the civilian judiciary and constitutes a blatant violation of and departure from the substance of the Palestinian Basic Law, article 97, which provides that the judiciary shall be independent, and judicial authority shall be exercised through the various types and levels of courts. The structure, jurisdiction, and rulings of the courts shall be in accordance with the law.

179. The Commission also considers that the Palestinian Basic Law restricts the competence to arrest and detain civilians to the Office of the Public Prosecutor and the civilian judiciary, as indicated in the text of article 112 of the Law, which affirms that any arrest resulting from the declaration of a state of emergency shall be subject to the following minimum requirements:

1. Any detention carried out pursuant to a state of emergency decree shall be reviewed by the Public Prosecutor or by the appropriate court no more than 15 days from the date of detention.

2. The detainee shall have the right to appoint a lawyer of his choice.

180. The Commission considers that, inasmuch as the Palestinian Basic Law restricts the competence to review warrants for the arrest of civilians in emergency situations to the Office of the Public Prosecutor or the appropriate court, it is neither permissible nor lawful for the Office of the Military Prosecutor and the military judiciary to assume such competence in normal circumstances that do not constitute an emergency situation.

181. Such assumption by the Office of the Military Prosecutor and the military judiciary of the competence to arrest and detain civilians has led, in the view of the Commission, to a situation in which the military security agencies have unlimited authority to exercise the functions of the judicial police with respect to civilians, thus impairing the rights and freedoms guaranteed to civilians by the Palestinian Code of Criminal Procedure in the event of their being arrested or detained. That is particularly important in view of the fact that the procedural authority of the Office of the Military Prosecutor and the military judiciary is derived from the Revolutionary Penal Code of the Palestine Liberation Organization (1979), the guarantees and precepts of which are not in conformity with the guarantees conferred by the Code of Criminal Procedure on accused persons under arrest.

182. Furthermore, intervention by the Office of the Military Prosecutor and the military judiciary and their exercise, in a manner that is at variance with the Palestinian Basic Law, of the competence to try cases involving persons whose lawsuits, disputes and offences the civil judiciary is competent to consider, constitutes a blatant attack on the rights and freedoms of individuals. The Palestinian judiciary, through the Supreme Court, its highest judicial authority, has affirmed in dozens of judicial rulings that it is neither permissible nor lawful for Palestinian civilians to be brought to trial or detained by the Office of the Military Prosecutor.

183. The proliferation of instances of torture is due in part to the lack of effective supervision of prisons. It is clear to the Commission that General Intelligence Service and Preventive Security Service prisons were not properly supervised by the agencies with the appropriate legal competence.

184. The Commission also considers that the widespread use of torture at some security agency prisons has been facilitated and encouraged by the lack of legislation to regulate and criminalize such practices. The Jordanian Penal Code (No. 16 of 1960) which is in force in the West Bank addresses the crime of torture in only one article, namely, article 208, which provides as follows:

1. Any person who inflicts on another any kind of violence or harsh treatment not permitted by the law with a view to obtaining a confession to a crime or extracting information shall be punished by a term of imprisonment of between three months and three years.

2. If such acts of violence or harsh treatment result in illness or injury, the term of imprisonment shall be between six months and three years unless a more severe punishment is required.

185. Those provisions make it clear that:

1. The crime of torture is considered to be a misdemeanour and not a felony, because the corresponding term of imprisonment varies between three months and three years, even though torture is regarded as a felony under the penal legislation of most if not all States.

2. Since the definition of torture is restricted to physical injury and violence, all forms of psychological torture and stress are excluded. Those forms include acts involving threats and intimidation; the imposition of total and unjustified isolation; detention in conditions that render the detainee incapable of knowing where he is being held or how long he has been there; subjecting a person to mock execution; and totally neglecting a person or putting him in a place equipped for the infliction of torture or giving the impression that the detention authorities are preparing to inflict torture.

3. Harsh and humiliating treatment which is intended to inflict serious degradation or physical or psychological indignity with no specific objective is not criminalized.

186. The Palestinian Basic Law as amended in 2003, article 13, provides as follows:

1. No person shall be subject to duress or torture. Indictees and all persons deprived of their freedom shall receive proper treatment.

2. All statements or confessions obtained through violation of the provisions contained in paragraph 1 of this article shall be considered null and void.

187. Given that there have been instances of torture and harsh and degrading treatment attributable to the Palestinian security agencies, the Commission considers that there is a need for a Palestinian law to prohibit torture and other forms of degrading treatment, in order to remedy failure by penal legislation in force in the West Bank to criminalize torture and other forms of degrading treatment.

188. The Commission wishes to emphasize the need to harmonize the proposed law with the provisions of the 1987 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has binding legal authority that must be respected and applied by all persons responsible for enforcing international law, irrespective of their status with regard to the Convention.

189. The Commission considers that a factor in the proliferation of such irregularities is the fact that perpetrators of the crime of torture, including the

members of the security apparatus who violated the principles and rules governing seizure and detention and the procedural rules established by law, are not accountable.

190. Accordingly, the Commission considers that public agencies should carry out their responsibility to hold accountable and prosecute all who break the law with regard to arbitrary and illegal arrests and the crime of torture and other forms of degrading treatment.

V. Violation of the right to assume public office in the West Bank

A. The right of Palestinians to assume public office in national legislation

191. The Palestinian Basic Law as amended in 2003 affirms the right of Palestinians to assume public office on the basis of equality of opportunity without any preference or distinction between them. Article 9 of the Law provides that all Palestinians are equal before the law and the courts, without distinction as to race, sex, colour, religion, political views or disability.

192. Article 26 of the Law provides as follows:

Palestinians shall have the right to participate in political life both as individuals and in groups. In particular, they shall have the following rights:

1. To form, establish and join political parties in accordance with the law;

2. To form and establish unions, guilds, associations, societies, clubs and popular institutions in accordance with the law;

3. To nominate candidates and vote in elections, in order to select representatives, who shall be elected by public ballot, in accordance with the law;

4. To hold public office and positions in accordance with the principle of equality of opportunity;

5. To conduct private meetings without the presence of police officers, and to conduct public meetings, gatherings and processions, within the limits of the law.

193. Similarly, article 25 of the Law provides that work is a right, duty and honour, and the Palestinian National Authority shall strive to provide work for any individual capable of performing it.

194. The affirmation in the Palestinian Basic Law of the right to assume public office on a basis of equal opportunity, and of the obligation of the Palestinian National Authority to endeavour to provide work for any individual capable of performing it, is in keeping with the provisions and principles of international human rights instruments, specifically, the International Covenant on Economic, Social and Cultural Rights.

195. The Commission considers that the application to the assumption of public office of the principle of equality of opportunity, which is adopted and affirmed by the Palestinian Basic Law, implies the obligation to provide uniform circumstances, conditions and standards for all citizens, in order to enable them to avail themselves of such opportunities, rights and status provided that they are suitably qualified and that there is a need for their employment in public office, or in the case of promotion and progression up the occupational hierarchy.

196. This principle also requires the official authorities to refrain from engaging in any action likely to discriminate between individuals in the assumption of public office, from giving special or preferential treatment to any category of persons to the detriment of others or from establishing limitations, procedures or measures that might have the effect of preventing certain individuals from availing themselves of opportunities to assume public office

on a basis of equality with other employees. Any such limitations, for whatever cause, must be regarded as discriminatory and contrary to the principle of equality between employees in the exercise of their constitutional and legal rights.

197. In its approach to the right to assume public office, the Palestinian Basic Law conforms to the provisions of international human rights law, specifically, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights both of which affirm the right and obligation of equality between employees in the assumption of public office. Article 21 of the Universal Declaration provides as follows:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives;

2. Everyone has the right of equal access to public service in his country;

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

198. The International Covenant on Civil and Political Rights establishes that right and emphasizes it in article 25, which states as follows:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

B. Right to assume public office in the legislation governing the national civil service

199. The Palestinian legislation regulating the right to assume public office as generally understood comprises the Civil Service Law (No. 4 of 1998), as amended by Law No. 4 (2005), and the implementing regulation thereof promulgated by Council of Ministers Decision No. 15 (2008). This legislation regulates working relations in the governmental sector as well as delineating and regulating various aspects and areas connected with the right, including its definition, the parties involved, the official body empowered to exercise administrative oversight of implementation of the right, the rights and duties of officials, administrative and disciplinary penalties for the breach of professional conduct, and other matters connected with public service.

1. Procedures for appointment to public office in the Palestinian National Authority

200. The Palestinian Civil Service Law specified a set of procedures to be observed and followed by the competent bodies when appointing individuals to

public office. In accordance with the law, they are defined and set forth in the following manner:

- The vacant post must be announced: article 19 of the Civil Service Law requires the authorities to announce vacant posts in at least two daily newspapers for two weeks from the time they fall vacant, specifying details of the post and any conditions of appointment;
- A competition must be held for appointment to posts for which a competitive examination is a requirement. Article 20 of the Civil Service Law states that the authorities must arrange a written and an oral examination for the posts that are to be filled. The written examination shall be announced first and those candidates who pass it shall be invited to take an oral examination. The names of those who pass the oral examination shall be announced, ranked in order of marks awarded;
- The names of those accepted to sit for the examination for appointment must be announced in two daily newspapers on at least two successive days and the announcement must specify the date and place of the examination;
- Under article 22 of the Civil Service Law, appointments in order of examination results must be made after the examination. When candidates are ranked equally, the one having the highest qualifications and greatest experience shall be appointed, and if two candidates are equal, the one who is older shall be appointed. The right to appointment of any person who has not been appointed to a post shall lapse one year after the announcement of the examination results.

2. Conditions for appointment to public office

201. The Civil Service Law, article 24, requires compliance with the following conditions by any person appointed to public office:

1. The person must be Palestinian or Arab;
2. The person must have attained the age of 18 years;
3. The person must be in good health and have no physical or mental disabilities likely to prevent him from performing the activities of the post to which he has been appointed;
4. The person must be entitled to the enjoyment of his civil rights and must not have been sentenced by a competent Palestinian court for a felony or misdemeanour of a dishonourable nature.

3. Probationary period prior to appointment to public office

202. The Civil Service Law, article 30, provides for a probationary period of one year during which a Government department or agency will evaluate the performance of a new employee. If the evaluation is unfavourable or if the new employee proves unsuitable for the post to which he was appointed, he will be notified of the termination of his employment two weeks before the end of the one-year probationary period. However, if he successfully completes the probationary period, the head of the competent Government agency will issue a decision confirming him in the post from the date on which he commenced work, and the secretariat will be informed accordingly.

203. Under article 36 of the implementing regulation of the Civil Service Law, during the probationary period the immediate supervisor of the official must prepare monthly reports on the official for submission to the head of the

competent governmental agency. One month before the end of the probationary period, the immediate supervisor of the official must submit to the head of the governmental agency a final report, based on his earlier reports, on the suitability of the official for the post to which he has been appointed. The same article provides that the evaluation of the official during the probationary period shall focus on his qualifications, conduct, performance of his duties, diligence, personal characteristics and approach to and success in his work.

204. Article 39 of the implementing regulation indicates the procedures that are to be followed in the event that the official does not successfully complete the probationary period, and provides that the probationer must be notified in writing of the termination of his employment by the head of the Government department to which he has been appointed two weeks before the end of the probationary period. Similarly, article 40 of the implementing regulation states that the head of the Government department in which the official on probation is employed must issue a decision confirming the appointment of an official who has successfully completed the probationary period.

4. Disciplinary procedures and penalties applying to public officials

205. If it is established that an official who has been appointed to public office has violated any law, regulation, directive or decision applicable to the public service, one of the following disciplinary penalties shall be imposed, in accordance with the provisions of article 68 of the Civil Service Law:

1. A caution or admonition;

2. A warning;

3. A deduction from remuneration not exceeding 15 days' salary;

4. The withholding or deferral of a periodic increment for a period not exceeding six months;

5. Withholding of promotion in accordance with the provisions of the Act;

6. Suspension from work on half salary for a period not exceeding six months;

7. Demotion, warning of separation, retirement on a pension, or separation from the service.

206. Article 69 of the Act also provides that the administration may not impose a sanction on an official until he has been referred to a committee of inquiry and has been heard. The decision on the matter shall be recorded in a special report and the decision on the imposition of a sanction shall be accompanied by a statement of reasons.

C. Violation of the right to hold a public position, alleged to have been committed by official Palestinian bodies

207. In order to obtain an idea of the nature, scale and substance of the violations alleged in the Goldstone report, the Commission contacted all the Palestinian human rights organizations that have, in its opinion, reliably observed and documented the violations in the West Bank, including Al-Haq, the Independent Commission for Human Rights and the Jerusalem Legal Aid and Human Rights Centre. The purpose was to provide the Commission with all information on the infringement or violation by official Palestinian agencies of

the right of Palestinians to hold a public position, in addition to their reports, statements and contributions.

208. The Commission also contacted Palestinian parliamentary blocs, namely, the Fatah movement bloc, the Change and Reform Bloc, which is affiliated to Hamas, the Popular Front for the Liberation of Palestine bloc, the Democratic Front and the Palestinian National Initiative, in order to gain an understanding of the positions and views of those blocs with regard to the alleged violations and to obtain from them evidence to support or refute the allegations.

209. All the reports received by the Commission from those organizations agree that a number of violations were committed by official bodies, specifically the General Personnel Council and the directorates and departments of various Palestinian ministries. Reports and affidavits indicate that official bodies in the West Bank have committed a number of violations, which may be summarized as follows:

(a) Cancellation of appointment or dismissal by official Palestinian bodies in the West Bank of hundreds of employees in the teaching profession and other public positions, on the basis of their political affiliation. The Ministry of Education, in particular, issued hundreds of decisions pursuant to which the appointment of teachers assigned to the education sector was halted on the basis of recommendations by the Preventive Security Service and General Intelligence Service that persons should not be nominated or appointed to a public position;

(b) Refusal in principle to appoint any new staff, regardless of whether the official Palestinian bodies had obtained the prior agreement from the security services that is known officially as a security clearance procedure.

Any appointment, regardless of the nature and level of the position, has become subject to scrutiny by the security services, who investigate the political affiliation of the person applying for the position, on the basis of which they determine his political suitability for the position.

D. Complaints received by the Commission regarding alleged violations of the right to hold a public position

210. The Commission received more than 140 complaints from Palestinian human rights organizations and parliamentary blocs concerning dismissal from employment. It received 61 direct personal complaints from individuals in the West Bank.[27]

211. From the review and study of the substance of those complaints and the relevant attachments, the meetings held with human rights organizations and parliamentary blocs and the hearings held for complainants,[28] it became clear to the Commission that there is evidence to support allegations that official bodies in the West Bank violated the right of citizens to hold a public position.

212. The Commission is of the opinion that official bodies in the West Bank did in fact violate the right of Palestinians to hold public positions. It further believes that decisions by the security services in the West Bank to cancel and halt appointment procedures for staff in the public sector were based on a range of considerations and grounds, the most significant of which are the following:

[27] The Commission holds documentation on all these complaints; lists are annexed.

[28] The Commission heard the testimony of 51 persons concerning complaints about dismissal from employment.

1. The employee's political affiliation

213. From the scores of complaints and hearings with complainants, it was clear to the Commission that, in most cases where appointment procedures were cancelled, sympathizers of Hamas, or those close to it, were targeted; in some cases, Islamic Jihad sympathizers were targeted.

214. Most of the hearings the Commission held with complainants revealed the existence of a clear link between the dismissal of such persons and their political affiliation to Hamas. Many dismissed persons were investigated after dismissal on the grounds of political affiliation to Hamas, while some were dismissed following detention or arrest by the security services on the charge of belonging to Hamas.

215. One person who testified to the Commission commented on the reason for the termination of his services, saying, "... On 21 Ramadan 2008, I was summoned by the Preventive Security Service and detained for 10 days. I was released on the night before the Eid, without being charged. After that, in November 2008, I received a letter terminating my services ...".[29]

216. In other testimony to the Commission, it was stated, "... On 31 December 2008, I received a letter discharging me from work and requiring me to return anything in my possession. When I consulted the Director of Education, he told me that he had no part in my dismissal and that the letter dismissing me had come from the Ministry. Prior to my dismissal, I had been called in for questioning by the Preventive Security Service, during which they asked me about my political affiliation to Hamas. I believe that the reason for my dismissal is related to my membership of Hamas ...".[30]

217. Another person stated, "... On 8 February 2009, I received a letter cancelling my appointment on the grounds that the approval of the competent agencies was not forthcoming and requiring me to return anything in my possession. I knew that those agencies were the Preventive Security and General Intelligence Services. I learned that I had been dismissed because of my political affiliation to Hamas. I had previously been detained for a month because of my political affiliation. In the course of my work, I had been professionally assessed and obtained an evaluation of "good". I was dismissed for political, not professional, reasons, and I believe that my dismissal on the grounds of my political affiliation is a violation of the law ...".[31]

218. Persons have been penalized for their stance in elections and, according to numerous affidavits, have been dismissed from their employment because they had supported Hamas in the 2005 election campaign, or voted for the Hamas bloc in the second elections for the Palestinian Legislative Council or voted for the Hamas-affiliated student bloc in the West Bank university student councils.

219. At one of the hearings, it was stated, "... On 22 April 2008, I was appointed to the tenured position of teacher at Aqraba Elementary School for Boys. The school is attached to the South Nablus Directorate of Education, situated in the village of Howwarah. On 17 December 2008, I was surprised to receive notice of dismissal from the job in the form of a letter from the Ministry of Education (No. ME40/937810406), stating, '... given that the competent bodies have not approved your nomination/appointment to the staff of the Ministry of Education and Higher Education, kindly return anything you may

[29] Statement documented by the Commission and registered as No. f-w/D-57/2010.
[30] Statement documented by the Commission and registered as No. f-w/D-58/2010.
[31] Statement documented by the Commission and registered as No. f-w/D-62/2010.

have in your possession'. After I received the notice terminating my employment, the South Nablus Director of Education told me to ask the Preventive Security and General Intelligence Services why they had not recommended approval of my appointment ... General Intelligence refused to see me until several acquaintances had intervened to facilitate a meeting with General Intelligence in Nablus. I was seen by two officers whose names I do not know. They questioned me, saying, 'You voted for Hamas and are a supporter of Hamas' and demanded that I should state which side is legitimate. After questioning, they told me that the interview was over and the upshot was that General Intelligence did not recommend my nomination for appointment because I had voted for Hamas ...".[32]

220. In another hearing, it was stated, "... after that, I checked with the Education Office in Nablus and was told to see the security bodies. About three months after the letter was sent, I was summoned by General Intelligence. My interrogation revolved around the legislative elections ...".[33]

221. In another affidavit, it was stated, "... I went to General Intelligence in Nablus and was informed that there was no problem. I am a graduate of the Department of Mathematics of Al-Najah National University and when I presented myself at General Intelligence, they asked me who I had voted for in the University elections. I told them I had left the ballot blank. They asked me about the legislative elections and I told them that I had not taken part in them ...".[34]

222. In another affidavit, it was stated, "... On 15 February 2009, I received a message from the school secretary that I should present myself to the North Nablus Directorate of Education. I went there on the same day and was given a letter stating that the competent bodies had recommended that my appointment should be cancelled. The same day, I went to the General Personnel Council and Ministry of Education in Ramallah, who led me to understand that I should check with the security services. Three days later, I proceeded to the Preventive Security Service, where I was told that there was no problem ... I went to General Intelligence in Hebron ... where it was indicated that I had been reported to be a Hamas activist ... After that, they interviewed me in March 2009 and asked me about problems at Hebron University when I was a student at the Polytechnic Institute. They concentrated on my participation in the student elections ... and asked me my opinion of Hamas and whom I had voted for ...".[35]

223. The affidavit of one of the persons heard by the Commission stated, "... On 1 November 2009, I received notice of dismissal. When I checked with the Ministry, they told me to see the Preventive Security and General Intelligence Services. When I presented myself at the General Intelligence Directorate and Preventive Security in Jenin, they questioned me ... The questions were not about my political affiliation but about whom I had voted for and the split in Gaza. I do not know the reason for my dismissal from work and no political charge has been levelled against me ... The security services did, however, accuse me of working for Hamas during the elections ...".[36]

[32] Statement documented by the Commission and registered as No. f-w/D-50/2010.
[33] Statement documented by the Commission and registered as No. f-w/D-51/2010.
[34] Statement documented by the Commission and registered as No. f-w/D-52/2010.
[35] Statement documented by the Commission and registered as No. f-w/D-60/2010.
[36] Statement documented by the Commission and registered as No. f-w/D-61/2010.

2. Cancellation of appointment because of close affiliation to Hamas

224. It is clear to the Commission that negative recommendations have been made by the Palestinian security services in respect of several persons, resulting in a refusal to approve their appointment to a public position on the grounds of close affiliation to Hamas.

225. A female teacher testified to the Commission that, "... On 28 August 2006, I was appointed to Carmel Secondary School, then transferred to another school, where I worked for three years in a non-tenured position. On 4 March 2009, I received a letter from the South Jenin Directorate of Education cancelling my appointment, discharging me from work and requiring me to return anything in my possession. I did not check personally with the security bodies; my father did that and was told that they had received a report about me ... and that my dismissal from work was for political reasons. The reports on my teaching had been excellent and I had never received any warning notice or been investigated. I was an excellent teacher in Islamic education. I believe that the problem is related to my husband, who was imprisoned by the occupying Power because he belongs to Hamas. That is why I was dismissed, not for incompetence at work ...".[37]

226. In another affidavit, it was stated, "... I was dismissed on 9 September 2009. I was not notified of my dismissal and only learned about it when my replacement arrived. When I checked with the South Jenin Directorate of Education, I was told that I had been dismissed because the Preventive Security and General Intelligence Services had not recommended my appointment. When I checked with the two Services, they would not see me but informed me that my husband had been detained by Preventive Security, accused of belonging to Hamas. They told me that if my husband left Hamas, I would be appointed. I was told unequivocally that the reason for my dismissal was that my husband belonged to Hamas".[38]

227. At another hearing, it was stated, "... Up to now, I do not know the reasons for the termination of my service. I went to the Independent Commission for Human Rights and then to the teachers' federation, where I was told that the reason for my dismissal was that one of my relatives belongs to Hamas ...".[39]

E. The Commission's view of violations alleged to have been committed regarding the freedom to hold public positions in the West Bank

228. As a result of the hearings held by the Commission for complainants and human rights organizations concerned with monitoring and documenting violations by official bodies in the West Bank of the right of Palestinians to hold public positions, the Commission believes it is true that violations occurred and that official Palestinian bodies in the West Bank infringed the provisions of the Palestinian Basic Law and the Civil Service Law (of 1998 as amended) regarding the right to hold public positions, in the following respects:

229. The Ministry of Education in particular, and other Government bodies in general, stipulate that employees must obtain the approval of the security

[37] Statement documented by the Commission and registered as No. f-w/D-52/2010.
[38] Statement documented by the Commission and registered as No. f-w/D-56/2010.
[39] Statement documented by the Commission and registered as No. f-w/D-57/2010.

services as a condition for appointment to a public position. The Commission is of the view that this measure is unlawful and, moreover, represents a clear violation by Government bodies of the provisions of the Palestinian Basic Law and the Civil Service Law (1998), given that article 24 of the latter exhaustively stipulates the conditions for appointment, namely, that the candidate for appointment should be Palestinian or Arab, no less than 18 years of age, enjoy full civil rights, and not have been found guilty in a competent Palestinian court of a felony or a misdemeanour involving dishonour or breach of trust, unless his moral standing has been restored.

230. The Law and its implementing regulation explicitly stipulate that an employee on probation must be informed of the termination of his employment two weeks before the end of the probationary period, which is one year. However, the Ministry of Education and Higher Education and other Government bodies have not complied with that stipulation.

231. Furthermore, cancellation of an employee's appointment during the probationary period should, as stated in the Law and its implementing regulation, be based on professional considerations related to the results of the assessment of employee performance during the probationary period. That assessment is based on the principles and criteria of competence, professional behaviour, performance of duties, diligence at work, personal attributes, working manner and productivity. By contrast, nowhere at all among the justifications for termination of employment is there any condition or stipulation requiring that a security investigation or a recommendation from the security services be taken into consideration.

232. Accordingly, cancellation pursuant to a security service's demand of an employee's appointment during the probationary period or more than one year after appointment to the post is a clear violation by the official bodies of the provisions of the law. Official bodies therefore transgressed and acted arbitrarily in issuing decisions refusing appointment or a tenured position on that basis, which is not provided for by the Law or its implementing regulation.

233. In order to gain an understanding of the legal basis for the stipulation by official bodies that employees should obtain security service approval as a new condition of appointment, the Commission consulted the General Personnel Council and learned that the measure had been adopted in the public sector on the basis of an official letter sent to the President of the Council on 9 September 2007. In that letter, the then Secretary-General of the Council of Ministers demanded that the General Personnel Council should consider a security investigation part of the appointment process. The letter also made it obligatory for the Council to liaise with the security services in order to implement the measure.

234. The letter of the Secretary-General of the Council of Ministers referred to a Council of Ministers' resolution that had been adopted at weekly session No. 18 of 3 September 2007 concerning the conducting of a security investigation as part of the appointment process. However, the Commission was not able to gain access to that resolution. It was merely informed officially by the current Secretary-General of the Council of Ministers that the Council, at the aforementioned session, had held security clearance to be a condition for the appointment of staff, pursuant to the Civil Service Law.[40]

[40] Copies of this correspondence are contained in annex 17 to the present report.

235. The Commission is of the view that staff dismissals or appointment cancellations were not prompted by professional concerns or related to the criteria for holding a public position. It has been established that such measure were taken on the basis of employees' political affiliation or their political views, and therefore constituted discriminatory act as defined by the Discrimination (Employment and Occupation) Convention, which was adopted at the forty-second session of the General Conference of the International Labour Organization (ILO) on 25 June 1958 and entered into force on 15 June 1960. Article 1 of that Convention defines discrimination in employment as follows:

1. For the purpose of this Convention the term "discrimination" includes:

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies.

236. Paragraph 23 of Human Rights Committee General Comment No. 25, on the right to participate in public affairs, voting rights and the right of equal access to public services, adopted at the Committee's fifty-seventh session in 1996, states that in order to ensure access on general terms of equality [to public service positions], the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens.

237. Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensures that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1.

238. Paragraph 1 of Human Rights Committee General Comment No. 18, on non-discrimination, adopted at the Committee's thirty-seventh session in 1989, states that non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights. Thus, article 2, paragraph 1, of the International Covenant on Civil and Political Rights obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Similarly, article 25 of the Covenant provides that every citizen shall have the right to take part in the

conduct of public affairs, without any of the distinctions mentioned in article 2 [of the Covenant].

239. The Commission believes that the term "discrimination", as employed in the Covenant, must be understood as including any distinction, exclusion, restriction or preference on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, which seeks or brings about the obstruction or hindrance of the recognition of the enjoyment or exercise of all rights and freedoms by all persons equally.

240. On this basis, the Commission is of the view that the dismissal of an employee on grounds of political affiliation or suspension of the right to hold a public position on the basis of a specific political affiliation discriminates between citizens and shows preference based on political affiliation and is inconsistent with the provisions of the Palestinian Basic Law, article 9, which affirms that all Palestinians are equal before the law and the courts, without distinction as to race, sex, colour, religion, political views or disability.

241. The Commission is of the view that the cancellation of the appointment of citizens in the public sector on the ground that they voted for a certain political body is a clear violation of an individual's right to participate in political life, as guaranteed and affirmed by the Palestinian Basic Law, article 26 of which provides thus:

> Palestinians shall have the right to participate in political life both as individuals and in groups. In particular, they shall have the following rights:
>
> 1. To form, establish and join political parties in accordance with the law;
>
> 2. To form and establish unions, guilds, associations, societies, clubs and popular institutions in accordance with the law;
>
> 3. To nominate candidates and vote in elections in order to select representatives, who shall be elected by public ballot, in accordance with the law;
>
> 4. To hold public office and positions in accordance with the principle of equality of opportunity;
>
> 5. To conduct private meetings without the presence of police officers, and to conduct public meetings, gatherings and processions, within the limits of the law.

242. The Commission believes that the Council of Ministers, as the body responsible under the Palestinian Basic Law as amended in 2003, article 69, for following up the implementation of laws, ensuring compliance with their provisions and taking necessary actions in that regard, must intervene to stop the application of security clearance measures, given that those measures are inconsistent and incompatible with the Palestinian Basic Law, which explicitly guarantees the right of Palestinians to hold public positions. They are also incompatible with the Civil Service Law, which contains no provisions with regard to such measures.

243. The Commission considers that, in order to remedy violations arising from security clearance measures and consequent violations of citizens' basic rights and freedoms, the Palestinian Council of Ministers must annul all decisions concerning the cancellation of appointments, reinstate all those who have been affected by those measures, and grant them compensation for losses

incurred, pursuant to article 32 of the Palestinian Basic Law, which affirms that any violation of a personal freedom or of the sanctity of a person's private life or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations shall not be subject to any statute of limitations. The National Authority shall ensure just reparation for any such harm suffered.

244. From the reports that it received and the hearings that it held, it is apparent to the Commission that scores of employees had their appointments cancelled more than a year after they had taken up a public position. In the Commission's view, this represents a clear infringement by Palestinian National Authority administrative bodies of the provisions of the Civil Service Law and its implementing regulation.

245. Article 30 of the above-mentioned Law provides for a one-year probationary period during which a Government department or body will evaluate the performance of a new employee. If the evaluation is unfavourable or if the new employee proves unsuitable for the post to which he was appointed, he will be notified of the termination of his employment two weeks before the end of the one- year probationary period. However, if he successfully completes the probationary period and there are no unfavourable comments on his performance, the head of the competent Government department must take steps to confirm him in the post permanently.

246. Accordingly, the Commission considers that all employees who complete the one-year probationary period have the legal right to be confirmed in a public post. Moreover, termination of their services on the basis of a former position is held to be tantamount to arbitrary dismissal from the civil service.

F. Violation by the de facto authority in the Gaza Strip of the right to hold a public position

247. While the Commission's mandate in respect of the right to hold a public position is restricted to investigating the situation in the West Bank, or the areas under the control and administration of the Palestinian National Authority, the Commission is of the view that it is important to draw attention to the manner in which the de facto authority in the Gaza Strip has also violated and infringed this right.

Appointment based on political affiliation

248. Most, if not all, appointments to public positions in the Gaza Strip are made on the basis of a person's political-affiliation background. If there is any question that a person is affiliated with Fatah or any group supporting or under the protection of that movement, he is disqualified and prevented from filling the vacant post.

249. The security services of the de facto authority in the Gaza Strip play a role similar to that of the security services in the West Bank with regard to performing security checks on persons who are the subject of appointment procedures. They also control and decide who is acceptable and may be permitted to fill the vacant post. Those services also have the authority to intervene and stop or cancel an appointment, or to terminate a person's employment.

250. The de facto authority in the Gaza Strip employs indirect methods of excluding personnel who do not support it. It is well known that the Palestinian

National Authority in the West Bank has continued to pay the salaries of civil servants in the Gaza Strip, on condition that they do not report to work places run by the de facto authority in the Strip.

251. Because such employees do not in fact report to work, the de facto authority in the Gaza Strip justifies their termination on the basis of the Civil Service Law, articles 90 and 100, the first of which provides as follows:

1. An employee who is absent from work without permission for a period exceeding 15 consecutive days shall forfeit his post unless he presents a valid excuse.

2. In such cases, absence shall be calculated on the basis of full salary or otherwise, as the case warrants.

252. Article 100, on the other hand, provides:

The employee's service shall cease, with forfeiture of the post, in either of the following two cases:

(a) Absence, in accordance with the provisions of article 90 of this Law;

(b) In the event of absence from work without permission or valid excuse for more than 30 non-consecutive days in a year, service shall be considered to be terminated as from the day following the completion of that period, provided that a written warning has been given after 15 days of absence.

253. On the basis of these provisions, the de facto authority has dismissed thousands of employees and replaced them with staff who belong to or are sympathetic to Hamas. The civil service in the Occupied Palestinian Territory has therefore become politicized in the full sense of the term, which, in addition to having negative repercussions on the civil service sector in both the West Bank and the Gaza Strip, will have a number of adverse consequences, the most important of which are the following:

- The employee's allegiance will be to the party, not to the job and its requirements;
- The employee will hide behind his position and his value to the party, which will grant him immunity in the event that he is called to account or prosecuted for any breach on his part of the requirements of the post;
- The employee's service is tied to his party orientation and, in consequence, he may fail to provide services relating to his function to anyone who is a partisan of a group that is not acceptable to his party.

254. The right to work is undoubtedly one of the most important components of the body of economic, social and cultural rights that has been established and is guaranteed by human rights instruments. Furthermore, it represents the premise for and the legal and material foundation of individuals' real enjoyment of all social, economic and cultural rights and freedoms as well as other civil and political rights and freedoms.

255. Human rights and freedoms and their constituent elements are interrelated and interdependent: they cannot therefore be broken into separate parts or fragmented. Consequently, it is not possible to respect some of those rights and enable individuals to enjoy them while at the same time allowing other rights to be abrogated and denied. Political rights are meaningless in the absence of social, economic and cultural rights, which, similarly, cannot be enjoyed by individuals who have no civil or political rights.

256. The various human rights and freedoms are complementary and must either be granted to individuals in full, in which case we can affirm that those rights exist; or they are diminished and divided, or some are recognized while others are denied, which in practice means that no rights exist, given that those that do are useless and devoid of value.*

257. The interrelated nature of human rights is not restricted to their various fields and principles, but extends to the individual branches of those rights: every primary human right on freedom includes a series of related or subsidiary rights, and the abrogation or elimination of any right or freedom unquestionably results in the abrogation and elimination of its subsidiary rights. Thus, in the area of social and economic rights, the withdrawal of the right to work entails, ipso facto, the removal and denial of all other rights established for the individual in that area, because the primary condition for those rights is missing. Indeed, the right to form unions or to strike, and the right to equal rights, pay and holidays and so on are useless and of no value if the grounds and justification for the existence of those rights, namely, the right to employment, does not exist.

258. The same applies to civil rights, one of the main pillars of which is the individual's right to life and personal integrity. Consequently, the abrogation of or lack of respect for that right automatically entails the denial and abrogation of all other rights, which lose all value and no longer have any raison d'être. Again, the same remarks apply to the individual's right to education, because all the rights that derive from it are devoid of meaning if the right to equality and non-discrimination, the right to freedom of opinion and expression, the right to humane treatment, and other rights, are denied.

259. The Commission therefore considers that when some Palestinians are deprived of the right of access to a public position they are not only denied the right to work and earn a livelihood, but also deprived of other rights, including, inter alia, the right to social security, suitable housing and health care; the right to marry and raise a family; and the right to a decent standard of living, dignity and education. An individual who loses his source of income and his livelihood will inevitably face difficult living conditions and be compelled to forfeit many rights which, without an income, he will not be able to exercise and enjoy.

* The United Nations General Assembly, in its resolution 32/130 of 1977, stressed the unity and integration of human rights as follows:

"(a) All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights;

"(b) The full realization of civil and political rights without the enjoyment of economic, social and cultural rights ...", etc.

The same was affirmed in the body of the Declaration on the Right to Development, adopted by the General Assembly in its resolution 41/128 of 4 December 1986, which provides "... that all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights ...".

VI. Violation of press freedoms in the West Bank

A. Press freedoms in current legislation and international covenants

260. The Palestinian Basic Law as amended in 2003 affirms freedom of opinion and expression and freedom of the press in more than one of its articles. Article 19 provides as follows:

> Freedom of opinion may not be prejudiced; every person has the right to express his opinion and circulate it orally, in writing, or in any other form of expression or art, with due consideration to the provisions of law.

261. Similarly, article 27 of the same Law provides as follows:

1. The establishment of newspapers and all other information media shall be the right of all and shall be guaranteed by this Basic Law. The sources of financing thereof shall be subject to the scrutiny of the law.

2. The freedom of the audio, visual and printed media, the freedom to print, publish, distribute and broadcast and the freedom of those working in these fields shall be guaranteed under this Basic Law and related laws.

3. Censorship of the media shall be prohibited. No warning, suspension, confiscation, cancellation or restriction shall be imposed on the media except by law and in pursuant to a judicial ruling.

262. The Palestinian Press and Publications Law (No. 9 of 1995) deals with press freedoms in more than one passage; article 2 of the Law provides:

> The press and printing are free and freedom of opinion is guaranteed to every Palestinian, who may express his opinion freely in speech, writing, photographs or drawings in any form of expression or medium.

263. Article 3 of the Law affirms the following:

> The press shall be free to present news, information and comment and shall contribute to the dissemination of ideas, culture and knowledge within the limits of the law and with due respect for public duties, rights and freedoms and for the freedom and sanctity of the private lives of others.

264. Article 4 of the same Law provides:

> Freedom of the press includes the following:
>
> (a) Informing citizens of events, ideas and trends and providing them with information at the local, Arab, Islamic and international levels;
>
> (b) Providing opportunities for citizens to publish their views;
>
> (c) Seeking out, from their various sources, information, news and statistics of interest to citizens and analysing, discussing, publishing and commenting on them within the limits of the law;
>
> (d) The right of journalistic publications, news agencies, editors and journalists to maintain the confidentiality of their sources of information or news obtained confidentially unless, in the course of a criminal case, the court rules otherwise with a view to safeguarding the security of the State, preventing crime or ensuring justice;

(e) The right of citizens, political parties, cultural and social organizations and unions to express their views and ideas and publish their accomplishments in their various fields of activity.

265. Article 6 of the Law states:

> The authorities shall seek to facilitate the task of journalists and researchers by providing information on their programmes and projects.

266. Article 7 of the same Law requires journalists and publications to refrain from publishing anything contrary to public order, providing as follows:

(a) Publications shall refrain from publishing anything contrary to the principles of freedom, national responsibility, human rights and respect for the truth, and shall consider freedom of thought, opinion, expression and information a public right comparable to their own rights;

(b) Periodicals intended for children and adolescents shall not contain any images, stories or news items that are incompatible with Palestinian mores, values or traditions.

267. Article 8 of the Law defines journalistic duties and ethics, emphasizing the need for all journalists to abide fully by the pertinent professional ethics, including the following:

(a) To respect the rights and constitutional freedoms of individuals and their right to conduct their private lives as they wish;

(b) To present material in an objective, comprehensive and balanced manner;

(c) To be accurate, impartial and objective in commenting on news and events;

(d) To refrain from publishing anything likely to give rise to violence, extremism or hatred or promote racism or sectarianism;

(e) To refrain from exploiting journalistic material in order to promote or detract from any commercial product.

268. In the area of international human rights instruments, the Universal Declaration of Human Rights, article 18, provides as follows:

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

269. Furthermore, the Universal Declaration and the International Covenant on Civil and Political Rights both affirm the right to freedom of opinion and expression. Article 19 of the Declaration provides:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

270. Article 19 of the Covenant reads as follows:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) For respect of the rights or reputations of others;

   (b) For the protection of national security or of public order (ordre public), or of public health or morals.

271. Article II of the Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War, proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its twentieth session, on 28 November 1978, provides:

1. The exercise of freedom of opinion, expression and information, recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding.

2. Access by the public to information should be guaranteed by the diversity of the sources and means of information available to it, thus enabling each individual to check the accuracy of facts and to appraise events objectively. To this end, journalists must have freedom to report and the fullest possible facilities of access to information. Similarly, it is important that the mass media be responsive to concerns of peoples and individuals, thus promoting the participation of the public in the elaboration of information.

3. With a view to the strengthening of peace and international understanding, to promoting human rights and to countering racialism, apartheid and incitement to war, the mass media throughout the world, by reason of their role, contribute to promoting human rights, in particular by giving expression to oppressed peoples who struggle against colonialism, neo-colonialism, foreign occupation and all forms of racial discrimination and oppression and who are unable to make their voices heard within their own territories.

4. If the mass media are to be in a position to promote the principles of this Declaration in their activities, it is essential that journalists and other agents of the mass media, in their own country or abroad, be assured of protection guaranteeing them the best conditions for the exercise of their profession.

272. Article III of the Declaration reads:

1. The mass media have an important contribution to make to the strengthening of peace and international understanding and in countering racialism, apartheid and incitement to war.

2. In countering aggressive war, racialism, apartheid and other violations of human rights which are inter alia spawned by prejudice and ignorance, the mass media, by disseminating information on the

aims, aspirations, cultures and needs of all peoples, contribute to eliminate ignorance and misunderstanding between peoples, to make nationals of a country sensitive to the needs and desires of others, to ensure the respect of the rights and dignity of all nations, all peoples and all individuals without distinction of race, sex, language, religion or nationality and to draw attention to the great evils which afflict humanity, such as poverty, malnutrition and diseases, thereby promoting the formulation by States of the policies best able to promote the reduction of international tension and the peaceful and equitable settlement of international disputes.

B. Alleged violations of freedom of the press by the Palestinian authorities

273. In order to obtain an idea of the nature, scale and substance of the violations alleged in the Goldstone report, the Commission contacted all the Palestinian human rights institutions that have, in its opinion, reliably observed and documented the violations in the West Bank. The purpose was to provide the Commission with all information that had been collected and documented by those institutions, in addition to their reports, statements and contributions.

274. All the reports of the organizations concerned with monitoring and documenting press freedoms and the exercise by Palestinians of the freedom of opinion and expression, in addition to the statements issued and contributions submitted by those organizations, indicated that press freedoms in the West Bank were the object of a number of violations, the most important of them being the following:

(a) The arrest and detention of journalists by the Palestinian security services and their interrogation with regard to their journalistic work, their political affiliation or their audio, visual or written publications;[41]

(b) The torture and subjection of some to degrading and humiliating treatment when detained or arrested by Palestinian security services, who disregard the provisions of the Code of Criminal Procedure (Law No. 3 of 2001) concerning the requirement that such persons should be transferred to the Office of the Public Prosecutor or the civil courts and that they should not be held in custody for more than 24 hours;

(c) The obstruction of the practice of journalism by the security services on grounds relating to journalists' political affiliation or in order to prevent them from publishing or researching subjects which the security services did not wish to have investigated;

(d) The confiscation of professional items and equipment and materials, which the security services retained in order to peruse their content or prevent journalists from using them, thereby thwarting the journalists in their work.

C. Complaints received by the Commission concerning alleged violations of press freedoms in the West Bank

275. On the basis of complaints and the hearings conducted by the Commission with journalist complainants regarding the unlawful practices to which they had

[41] Statement documented by the Commission and registered as No. m/S-40/2010.

been subjected in the West Bank, as well as the reports of the Palestinian Centre for Development and Media Freedoms (MADA), and human rights organizations, specifically, the Palestinian Centre for Human Rights in Gaza, the Independent Commission for Human Rights and the Samir Kassir Foundation, the Commission came to the conclusion that the law enforcement agencies had violated press freedoms and the rules and guarantees which must be respected and applied in the case of arrest and detention of journalists. The most serious violations noted by the Commission during the hearings it conducted with journalists included the following:

- Arrest and detention of journalists by security services, on the basis of journalists' work;
- Subjection of detained journalists to torture and ill-treatment;
- Attacks on and hampering of journalists in the performance of their work;
- Confiscation of professional items and equipment;
- Threatening and intimidation of journalists;
- Pressure to compel some journalists to collaborate with security agencies;
- Disregard by the detaining services of court release orders in respect of detained journalists.[42]

276. The following statements, documented by the Commission, are evidence of the violations to which journalists have been subjected because of their journalistic work. The statements were documented by the Commission during the hearings it conducted with journalists who complained about their subjection to excesses or violations perpetrated by Palestinian National Authority agencies in the West Bank.

277. One of the violations documented by the Commission in this area was the arrest of the journalist Mustafa Ali Abdallah Sabri, who was detained by all the security services — General Intelligence, Preventive Security and Military Intelligence — because of his work as a journalist. The statements made by him to the Commission on 8 May 2010 contain the following: "On 14 August 2007, I was arrested by the General Intelligence Service in the city of Qalqilya after being summoned by telephone. I was detained by that Service for five days. During detention I was interrogated about my work as a journalist, and during the period of interrogation I was subjected to torture, *shabah* and degrading and harsh treatment, being held throughout the period of detention in a cell 180 centimetres long by 90 centimetres wide. After five days of detention I was released, after signing an agreement to respect the laws of the Palestinian National Authority ... I was also arrested on 5 May 2008, this time by the General Intelligence Service in Qalqilya, and detained for three days, during which they did not question me at all ... On 29 July 2008, I was summoned by General Intelligence Service for publishing in the press the facts about the humiliation to which I had been subjected by that Service, and was detained for 14 days. After that, I was transferred to the military court on the charge of having attacked a General Intelligence Service officer. He was an officer whom I had pushed, during one of my detentions, after he slapped me in the face. I remained in detention until 11 September 2008, when I was released by the military police pursuant to a Palestinian Supreme Court ruling that I should be released on that date ... The moment I stepped out of the door of the military police centre in Qalqilya, a General Intelligence Service force apprehended me

[42] These violations appear in the section on detention and torture in the West Bank.

and transported me to General Intelligence Service headquarters, where I remained in detention until 19 September 2008 ... On 21 April 2009, a force from the Preventive Security Service in Qalqilya arrested me. On that occasion my home was searched and my press archives were confiscated. After 15 days of detention I was transferred to the city hospital because of elevated glucose levels and high blood pressure. I remained there for two days. Before being taken to hospital I had been subjected to beating, torture and *shabah* ... Forty-three days after my arrest I was transferred to the headquarters of the Preventive Security Service in Ramallah, where the situation was much worse, inasmuch as I was subjected to *shabah* for 18 days, hanging from the window or the door with my eyes blindfolded and my hands cuffed. While I was being subjected to *shabah*, the doctor, when he came for a visit, finding me stretched in *shabah*, requested that I should be transferred to a hospital in Ramallah. After I was given first-aid treatment, they returned me to *shabah* ... On 15 July 2009, the Palestinian Supreme Court ruled that I should be released. The Preventive Security Service did not execute the court order immediately, but delayed its execution for 10 days ...".[43]

278. In another testimony regarding the arrest, detention and interrogation of journalists by the security services in relation to their work as reporters, one journalist reported to the Commission that on 11 November 2007, after he had finished filming an interview in her home in Hebron with the wife of the President of the Legislative Council, who is in the detention of the Israeli occupying forces, a Preventive Security force arrested him and his colleague in a degrading manner as they emerged from the President's home and took them to Service headquarters in Hebron, where they confiscated their cameras and tape of the interview and interrogated them about their work at the Al-Aqsa television channel. They were detained for 20 days, after which they were released on bail.

279. In September 2008, the same journalist was arrested and detained for 15 days by the General Intelligence Service in Bethlehem on a charge of working for the Al-Aqsa satellite channel. He was again arrested by the security service in Bethlehem in July 2009 after being requested to appear at the headquarters of the service in that city. According to his testimony to the Commission, during that detention he was subjected to *shabah*, beating with whips and harsh and degrading treatment. He was released a month after his arrest.

280. In his testimony regarding that detention he said: "... They put me directly into a cell without questioning me; then they subjected me, blindfolded, to *shabah* and took turns beating me with a hose about seven times. I shouted to them that I was a journalist and should not be treated in that manner, whereupon they struck me in the face with the hose. I reacted by getting free of the bonds and pulled the cover off my head. The person who had been beating me stepped back and called the officer, and at that moment I saw around me some 10 people who were being tortured and subjected to *shabah*. When the officer arrived, they threw me on the ground and beat me. I kept screaming until the interrogation chief arrived. He also slapped me and ordered me not to argue and to keep quiet, then tied me and subjected me to *shabah* again..."[44]

281. The same journalist was detained for 15 days in September 2009 by the Military Intelligence Service, and again in January 2010, and was also placed

[43] Statement documented by the Commission and registered as No. S/D-4/2010.
[44] Statement documented by the Commission and registered as No. S/D-5/2010.

under arrest for 10 days by the General Intelligence Service because of his work as a journalist.

282. In another hearing, held at the headquarters of the Commission on 4 May 2010, the journalist Sa'id Khwairi testified that on 24 January 2009 he had been arrested by the Preventive Security Service in Nablus after receiving a summons by telephone to appear at Service headquarters in that city.

283. As reported by Mr. Khwairi, immediately after arrest he was subjected to interrogation that focused on personal information, professional matters relating to his work as a journalist, his work at Al-Quds Satellite Channel and his connection to the Al-Aqsa Satellite Channel. On the second day, the journalist was transferred to Al-Junaid Prison, where he was subjected during his detention to a number of sessions that focused on the same information, until his release on 1 March 2009. He stated that he was placed in a cell in which not even the minimum health requirements were met. Conditions were so bad that he was taken to hospital. He also testified that he was told that if he wanted to end his detention, he should explain his connection with Hamas and the Al-Aqsa Satellite Channel as well as the connection of Al-Quds Satellite Channel with Hamas. He said that he felt that he was under constant surveillance by the Palestinian security services.[45]

284. On 29 March 2009, General Intelligence Service men in the village of Deir Istiya, Salfit Governorate, intercepted Mr. Khwairi and the crews of Al-Quds Satellite Channel and the Ramattan News Agency while they were interviewing people in the village. The members of both crews were taken to General Intelligence Service headquarters in Salfit Governorate and questioned about the nature of their work in the village.

285. Journalist Qais Omar Darwish Omar [Abu Samra] stated in the hearing held at Commission headquarters on 4 May 2010, that on 21 February 2009, he, a native of the northern West Bank village of Saniriya, in Qalqilya Governorate, and working as a correspondent for the Jordanian newspaper *Al-Haqiqa al-Dawliya* and the Internet site IslamOnLine, received a written notice summoning him to appear at Preventive Security Service headquarters in Qalqilya. Next day, 22 February 2009, he duly reported and was detained for three days, during which he was questioned regarding about matters related to his work as a journalist.

286. On 22 June 2009, the Preventive Security Service in the West Bank arrested Qais, at his home in the village of Saniriya, Qalqilya Governorate, in the northern West Bank. He remained in detention for 88 days, during which he was subjected to lengthy periods of torture, including whipping, slapping and *shabah*; humiliation and ill-treatment; and psychological pressure exerted by sleep deprivation.

287. He mentioned in his statement that during his interrogation he was asked about his relationship to Hamas at the time of his university studies. He was also questioned about his work as a journalist and asked to cooperate with the Preventive Security Service in ascertaining the names of Hamas members in his village. He indicated that after his detention he had begun to suffer from panic and fear of being injured.[46]

288. During a hearing with a journalist who asked to remain anonymous, it emerged that he had been arrested in Nablus on 5 March 2008 by the

[45] Statement documented by the Commission and registered as No. S/D-3/2010.
[46] Statement documented by the Commission and registered as No. S/D-2/2010.

Preventive Security Service and detained for 78 days, in the course of which he was asked about the nature of his journalistic work. He was not subjected to any physical torture, but endured psychological torture as a result of being confined in a prison cell for 40 days.

D. Opinion of the Commission on allegations of violations of press freedom

289. As a result of its hearings with complainants and human rights organizations concerned with press freedom, the Commission believes that the Palestinian authorities violated the provisions of the Palestinian Basic Law as amended in 2003, the Press and Publications Law (No. 9 of 1995) and the Code of Penal Procedure (Law No. 3 of 2001) concerning press freedom in the following areas:

290. It was clear to the Commission that all the arrests of the journalists who spoke to the Commission were made for political reasons by Palestinian National Authority security forces in the West Bank. Journalists were targeted on the grounds of their political affiliation or opinions, not on the basis that they had committed any violation of the rules governing the exercise of their profession and press freedoms that would have justified their being questioned.

291. Accordingly, the Commission considers that the detention and arrest to which the journalists were subjected on the above-mentioned grounds were illegal acts, because they were a blatant violation of the provisions of the Palestinian Basic Law, article 9, which affirms that all Palestinians are equal before the law and the courts, without distinction as to race, sex, colour, religion, political views or disability. Furthermore, article 19 of the Basic Law provides that freedom of opinion may not be prejudiced and that every person has the right to express his opinion and circulate it orally, in writing, or in any other form of expression or art, with due consideration to the provisions of law. Article 27 of the Basic Law also guarantees the freedom of the audio, visual and written media as well as the freedom to print, publish, distribute and broadcast, together with the freedom of individuals working in that field.

292. The successive arrest by the security agencies of the same journalist, who was no sooner released by one agency than he was rearrested and detained by another, implies, on the one hand, a lack of effective coordination between the security agencies and, on the other hand, a lack of mutual respect among the security agencies that enables one such agency to arrest a journalist who has just been released by another. Such procedures, in the view of the Commission, also mean that journalists are subjected to increased pressure and intimidation, because they constantly feel that they are being pursued, and this may affect their way of thinking and prompt them to carry out their work in accordance with the wishes and orientation of the authorities.

293. With regard to the lack of liability and accountability of persons who violate human rights and freedoms and to journalistic immunity and the inadmissibility of prosecuting or holding journalists accountable for their professional activity, the Commission considers that the failure to hold accountable those who violate human rights and the rights and freedoms guaranteed by the Palestinian Basic Law may have encouraged certain persons to violate the safeguards and protections for and inviolability of journalists that is set forth in national legislation.

294. It became clear to the Commission that the Palestinian Union of Journalists had done nothing to protect journalists from being prosecuted or

held accountable on the basis of their professional activity; the Union had therefore failed to carry out its professional role in defence of its members.

295. The Commission considers that bringing any journalist before the military judiciary or the Office of the Military Prosecutor or arresting and detaining a journalist on the basis of an arrest warrant issued by the Office of the Military Prosecutor or the military judiciary is not only a violation of the provisions of the Palestinian Basic Law as amended in 2003 and the Palestinian Code of Criminal Procedure (Law No. 3 of 2001), but is also a gross violation of the Press and Publications Law, all articles of which, and article 42 in particular, restricted to the Public Prosecutor and the competent civilian courts the authority to investigate journalists and hold them accountable in the event of their transgressing the duties and rules of the journalistic profession.

E. Violation of press freedoms in the Gaza Strip

296. While the Commission had no mandate pursuant to the Goldstone report to inquire into press-related violations in the Gaza Strip, it considers it appropriate to draw attention to the significance of reports of violations of freedom of the press in the Gaza Strip that it has obtained and documented. It is convinced that those violations must be mentioned and that they require the intervention of the de facto authority in the Gaza Strip in order to protect, guarantee and safeguard the inviolability of journalists in the Gaza Strip.

297. The violations of press freedoms in the Gaza Strip that have come to the attention of the Commission include the following.

298. On 19 March 2009, a journalist named Sakher Madhat Abu al-Awn, a correspondent of the Palestinian office of Agence France Presse, went to the headquarters of the internal security agency of the Ministry of the Interior of the de facto authority in Gaza, where he was interrogated as to the nature of his journalistic activity and accused of vilifying Hamas. The interrogators also asked about the nature of his work in the Union of Journalists and his relations with the International Federation of Journalists and the Federation of Arab Journalists and obtained his e-mail address and password.

299. On 29 November 2008, members of the police force of the de facto authority in the Gaza Strip stopped journalist Ala Salama, who lives in the town of Rafa and works as a correspondent of the local Al-Quds Radio station, when he was returning from the Rafa crossing point to his home in the town after finishing his work as a journalist covering developments in connection with the travel of pilgrims from the Gaza Strip. The policemen forced him into a jeep, blindfolded him and took him to some unidentified place, beating him up on the way there.

300. On 10 June 2009, the journalist Mohammed Zahdi al-Mashharawi, a correspondent of the Al-Quds satellite television channel, was attacked in Gaza City by members of the security service while he was covering a visit to Al-Shifa Hospital by an international delegation headed by Sheikha Hessa Al-Thani, United Nations Special Rapporteur on Disability.

301. On 12 August 2009, two security guards from the Ansar security compound belonging to the de facto authority in the Gaza Strip stopped a crew from the Al-Ittijah Satellite Channel that was carrying out its professional duties in the main street leading to the camp. The security guards took the crew, comprising the journalist Mazen al-Balbisi, correspondent, cameraman Jifara al-Safadi, and assistant cameraman Abdulrahman Zaqut, to headquarters, where an officer confiscated and destroyed the tape that was in the camera.

302. On 14 August 2009, the Ministry of the Interior of the de facto authority prevented the journalists and other media representatives from covering the events that took place in the town of Rafah in the south of the Gaza Strip which involved members of the security services and gunmen from the Izz al-Din al-Qassam Brigades, on the one hand, and gunmen from the group Jund Allah, led by Sheikh Abdul Latif Musa, on the other hand. The confrontation left over 28 people dead, including Sheikh Abdul Latif Musa, and dozens wounded. On 18 August 2009, the Ministry of the Interior of the de facto authority issued a press release claiming that the media had been prevented from filming the events in Rafah in order to protect the lives of the journalists and the feelings and sensitivities of the public.

303. On 31 August 2009, members of the Internal Security Service intercepted Ma'an News Agency correspondent Ibrahim Muhammad Qanan and cameraman Ahmad Ghabayin, while they were working in the al-Namsawi district in western Khan Younis. The two journalists had been preparing a report on United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) projects that had been disrupted by the blockade when they were intercepted by three members of the Internal Security Service, who took them in their vehicle to Service headquarters, where the two journalists remained inside the vehicle, in the courtyard. An officer came and inspected their press passes and questioned them as to the nature of their work and their relations with Palestine television.

304. On 10 October 2009, the journalist Ayman Muhammad al-Shaikh Salama, a correspondent of the Al-Quds satellite television channel, was severely beaten by a policeman while in the al-Amal district to the west of the town of Khan Younis in the south of the Gaza Strip while he was gathering information on the campaign to eliminate acts of aggression being conducted by Khan Younis municipality in cooperation with the police. The journalist was taken to Nasser Hospital in the town.

VII. Violation of freedom to form associations in the West Bank

305. The Palestinian Basic Law as amended in 2003 affirms the right of Palestinians to form associations and to participate in political life. Article 26 of the Law provides as follows:

> Palestinians shall have the right to participate in political life both as individuals and in groups. In particular, they shall have the following rights:
>
> 1. To form, establish and join political parties in accordance with the law;
>
> 2. To form and establish unions, guilds, associations, societies, clubs and popular institutions in accordance with the law;
>
> 3. To nominate candidates and vote in elections in order to select representatives, who shall be elected by public ballot, in accordance with the law;
>
> 4. To hold public office and positions in accordance with the principle of equality of opportunity;
>
> 5. To conduct private meetings without the presence of police officers, and to conduct public meetings, gatherings and processions, within the limits of the law.

306. The Law of Palestinian Charitable Associations and Community Organizations (Law No. 1 of 2000) affirms the legal right of Palestinians to form and establish associations and community organizations for various community activities, and article 1 of the Law provides that Palestinians have the right freely to engage in social, cultural, professional and scientific activities, including the right to establish and run associations and community organizations.

307. Palestinian legislation, in its approach to the right to form associations, conforms to the provisions and principles of international human rights law, in particular, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, both of which explicitly recognize the right to form associations as one of the fundamental rights and freedoms which States are bound to guarantee and make available to individuals.

308. That right was affirmed and guaranteed in the Universal Declaration of Human Rights, article 20, which provides that everyone has the right to freedom of peaceful assembly and association. The right to form associations is also affirmed in the International Covenant on Civil and Political Rights, article 22, which provides that everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

309. Because the right to form associations is one of the general rights and freedoms enshrined in the Basic Law, that right acquires the status and significance of a general right, which is to say that it belongs to the category of rights that require constructive action by a State, which should organize and establish them through explicit recognition of their legal status and affirmation of the enjoyment thereof by all members of society without distinction or discrimination.

310. The fact that this right has acquired the status of a general freedom imposes several obligations on States, principally, the mandatory duty of the State to intervene in a serious and effective manner to regulate the general freedoms and codify them in laws in order to guarantee that individuals are able to enjoy and exercise them.

311. Among the most important of the obligations imposed on the Palestinian National Authority by the freedom to form associations is the mandatory duty to refrain from any action or activity that is likely to restrict or impede the enjoyment by individuals of that right, or to derogate from it without good reason or legitimate justification that might require or justify such action. Those obligations also imply the duty to refrain from influencing individuals or preventing them from freely exercising this right.

A. Agencies entitled to register associations and monitor their activities at the level of the National Authority

312. Under the provisions of the Law of Charitable Associations and Community Organizations, the registration and monitoring of the work of community associations and organizations in the Palestinian territories is carried out by two governmental agencies, namely, the Ministry of the Interior and the competent ministry.

1. Palestinian Ministry of the Interior

313. The Palestinian Ministry of the Interior is responsible for registering charitable associations and community organizations and for recognizing them as legal persons after the entities concerned have submitted an application for registration that fulfils the legal conditions under Palestinian law, namely:

(a) Submission of an application in writing for registration of the association together with three copies of the association's by-laws to the Department for the Registration of Associations in the Palestinian Ministry of the Interior.

This condition is specified and emphasized in the Law of Charitable Associations and Community Organizations, article 4, paragraph 1, which stipulates that founders must submit a written application to the competent department of the Ministry of the Interior in compliance with all the relevant conditions, signed by at least three of the founders authorized to register and sign on behalf of the association or organization. The application must be accompanied by three copies of the by-laws signed by the members of the founding committee.

(b) Article 5 of the Law specifies the information that must be included in the by-laws of the association or organization.

Taking into consideration the provisions of the Law, by-laws must include the following information:

1. The name of the association or organization, its address, its purpose and its main headquarters;

2. The financial resources of the association or organization and how they are used or disposed of;

3. Conditions for and types of membership, reasons for termination of membership and membership fees;

4. The organizational structure of the association or organization, and the rules governing the amendment of its by-laws, and its merger or unification;

5. Procedures for convening the general assembly;

6. The means of financial supervision;

7. Rules governing the dissolution of the association or organization: how the resources and property of the association or organization are to be disposed of in the event of its dissolution.

(c) Issuance of a decision by the Minister of the Interior on the registration of the association.

314. When the founders submit an application for registration, and their application is in compliance with the requirements of the law, the Minister of the Interior shall issue a decision accepting the registration of the association or organization within two months of the submission of the application. Should no decision have been taken within two months of receipt of the application by the Ministry of the Interior, the association or organization shall be deemed to be registered under the Law, in accordance with article 4.

315. The Law also affirms, in article 4, paragraph 4, the right of the founders of the association, in the event that the Minister of the Interior issues a decision rejecting the application for registration, to contest the decision before the competent court, namely, the Supreme Court, within a period of 30 days from the date of receipt in writing of the decision rejecting the application of the association or organization.

(a) Law of Charitable Associations and Community Organizations

316. Under the Law of Charitable Associations and Community Organizations, the competence of the Ministry of the Interior with respect to such associations is restricted to the following:

- Registering associations or community organizations that meet the requisite conditions;

- Auditing, in accordance with article 6 of the Law, the finances of the association. In this connection, the Act makes it a condition that the minister of the competent ministry shall issue a letter of authorization to the Minister of the Interior requesting that the Ministry of the Interior audit the finances of the association in order to establish that the assets of the association have been used for the purposes for which they were allocated and in accordance with the provisions of the Law and the by-laws of the association or organization;

- Receiving statements concerning amendments or changes that have been made to the location of headquarters, by-laws, objectives or purposes of the association or organization or any complete or partial change in its board of directors, in accordance with article 12 of the Associations Law;

- Forming of transitional committees to manage the association as specified in article 22 of the Law, which entitles the Minister of the Interior to appoint a transitional committee from among the members of the general assembly of the association or organization to carry out the functions of the board of directors for a maximum period of one month; and the convening the general assembly within the same period to elect a new board of directors.

317. The competence of the Minister of the Interior to appoint such transitional committees shall be limited and shall not be exercised other than in one of the following two cases:

- If all members of the board of directors of the association or organization resign;
- If some of the members of the board of directors of the association or organization resign and the remaining members of the board are unable to regard themselves as constituting a transitional committee, in which case the Minister shall convene the general assembly of the association within one month of those resignations in order to elect a new board of directors.

(b) Annulment of the registration of the association and termination of its status as a body corporate

318. Under the above-mentioned law, the competence of the Minister of the Interior includes the power to annul the registration of an association and terminate its status as a body corporate if, within a period of one year from its being registered by the Ministry, an association has not commenced operations, unless that inactivity is caused by force majeure.

(c) Dissolution of an association and the termination of its status as a body corporate

319. On the basis of article 37 of the Law, the Minister of the Interior is entitled to issue a decision dissolving an association or organization in cases where an association or organization substantially violates its own by-laws or contravenes any of the basic requirements of the Law pertaining to the registration and constituting a fundamental consideration in the decision by the Ministry to register and accredit that association or organization.

320. Accordingly, any transgression or violation by the association or organization of the basic requirements exhaustively listed in article 5 of the Law empowers the Minister of the Interior to dissolve it.

321. In order to ensure that there is no unjust exercise of executive power in putting this procedure into effect, the Law explicitly provides that the Ministry must issue a written warning to the association or organization concerning the nature of the violation that it has committed against its by-laws before issuing the decision to dissolve it. The Law also obliges the Ministry to grant an association a grace period of three months in which it may rectify the violation and restore the status quo ante.

322. If the association or organization responds to the warning and remedies the violation of its by-laws, the warning is regarded as never having been issued and it is not permissible to dissolve the association or organization or terminate its status as a body corporate.

323. In order to guarantee that the Ministry of the Interior does not act in an arbitrary fashion and exploit its competence and authority with respect to existing associations and organizations, article 38 of the Law asserts the right of associations and organizations that have been adversely affected by the Minister's decision to dissolve them to contest that decision before the Supreme Court. In such cases, an association is entitled to continue to operate until such time as a final ruling is handed down.

2. The competent ministry

324. The competent ministry is the ministry within whose purview the main activity of the association falls: the nature of the objectives and purposes of an association as defined in its by-laws determines which ministry shall be considered competent. For example, the Palestinian Ministry of Health is the competent ministry with respect to associations working in the field of health and the Ministry of Education is the competent ministry with respect to associations concerned with education, the eradication of illiteracy or teacher training.

325. Pursuant to the above-mentioned Law, the competent ministry is the body with the authority to monitor the work of associations and supervise performance of their obligations and application of their by-laws and the provisions of the Law.

B. The rights of associations under the Palestinian Law on Associations

326. The body of legislation governing the activities of associations on Palestinian soil consists of the Law on Associations (No. 1 of 2000) and Council of Ministers Decision No. 9 of 2003 concerning the implementing regulation for that Law.

327. The Law consists of nine sections and 45 articles, which address various legal issues relating to associations and organizations, including the nature of the legal relationship between associations and the executive authority.

328. The 70 provisions of the regulation adopted by Council of Ministers Decision No. 9 of 2003 serve as guidelines for implementing the Law on Associations and for the registration and operation of associations.

329. The main rights and obligations attached to the registration and operation of associations under the Law and its implementing regulation may be summarized as follows:

1. An association has the right to register if it meets the conditions for registration. The law affirms that any association that meets those conditions has the right to be registered.

2. Associations have the right to open branches and conduct income-generating projects. The Law on Associations, article 15, states that associations and organizations are entitled to organize activities and establish income-generating projects provided the revenues are used to cover the expenses of activities that they undertake in the public interest. Associations and organizations may set up branches inside Palestine.

3. The authorities may not interfere with the composition of association boards, or with the holding and conduct of meetings and activities. The implementing regulation, article 46, provides that an association shall be administered by its board as provided for in its by-laws, including its basic statute, so long as there is no conflict with the Law on Associations. Every association shall have a board of directors and a general assembly. No government agency may interfere with or seek to influence the conduct of the meetings, elections or activities of any association.

4. No association may be dissolved without prior notification and a three-month grace period in which to settle its affairs.

5. An association shall not be subject to seizure of assets, closure or search of its headquarters except by order of the competent legal authority. The Law on Associations, article 41, provides that it is not permissible to seize the assets of any association or organization, or to close or conduct a search of its headquarters or any of its premises or branches without an order issued by a competent judicial body.

6. Associations have the right to amend their by-laws and goals on condition that they inform the competent department or ministry within one month of the date of such amendment. The implementing regulation, article 45, states that the founders of an association shall have the right to establish its by-laws freely and without interference from any Government agency.

7. An association has the right to legal appeal. In order to protect associations and organizations from abuse of authority by the Government, the Law on Charitable Associations and Community Organizations affirms that an association or organization adversely affected by a ministerial decision to dissolve it or revoke its registration has the right to appeal that decision before the competent legal body, namely, the Supreme Court. The same Law provides that if the registration of any association or organization is revoked by ministerial decision, the reasons must be stated in writing. The association or organization has the right to contest the decision before the competent court.

C. Alleged violations by the Palestinian authorities of the freedom to form associations

330. In order to obtain an idea of the nature and scale of violations alleged by the Goldstone report in this regard, the Commission contacted all the Palestinian human rights institutions that, in its opinion, reliably observed and documented such violations in the West Bank. These included Al-Haq, the Independent Commission for Human Rights, the Palestinian Network of Non-Governmental Organizations and the Jerusalem Legal Aid and Human Rights Centre. It asked those institutions to supply the Commission with documented instances of infringement or violation by the Palestinian authorities of the right of Palestinians to form charitable associations and non-governmental organizations.

331. The reports received by the Commission from those institutions were unanimous in stating that a number of violations of the right to form associations had been committed by the authorities in the West Bank, notably the Ministry of the Interior and the security services. The accounts of violations committed by the authorities in the West Bank contained in those reports may be summarized as follows:

1. Transitional committees consisting of persons who were not members of associations were appointed to administer and run those associations in the place of boards elected by association members. According to the complaints division of the Independent Commission for Human Rights, 11 such transitional committees appointed by the Palestinian Ministry of the Interior replaced elected boards in the West Bank in 2009.[47]

[47] "The status of associations under the Palestinian National Authority in 2009: report of the Palestinian Independent Commission for Human Rights," Special Report No. 68, p. 13.

2. Supreme Court decisions overturning orders by the authorities to appoint transitional committees for associations were not enforced.

3. Palestinian security services prohibited some associations from carrying out their work and threatened board members with arrest if they defied such prohibitions.

4. Palestinian security services searched the headquarters of associations and confiscated documents and equipment.

5. Association branches were shut down and barred from operating.

6. Associations were required to submit administrative and financial reports to the Ministry of the Interior.

7. The Ministry of the Interior made prior approval a requirement for the opening of bank accounts.

8. The Ministry of the Interior made security service approval of founding members a requirement for the registration of the association.

D. Complaints received by the Commission of alleged violations of the freedom to form associations

332. The Commission received five complaints of violations by the Ministry of the Interior and the security services of the right to form associations.[48] After examining those complaints and supporting documents, holding hearings for the complainants on 4 and 8 May 2010, and for the representatives of the relevant human rights organizations,[49] it became clear to the Commission that there was evidence to support the allegations of violation by the authorities in the West Bank of the above-mentioned right. Testimony by witnesses at hearings held by the Commission in the West Bank confirmed that the authorities had committed the following violations.

333. Interim committees had been appointed to administer and run some associations in place of the boards elected by association members. A number of human rights institutions interviewed by the Commission confirmed that this violation had occurred.[50] It was also confirmed by testimony from the Chairman of the Board of the Islamic Society for Orphan Care — Yatta, in Hebron Governorate. He testified that, on 19 August 2008, although the Society had received no warning from the Ministry of the Interior concerning any violation or illegal procedure on its part, he was surprised by the appearance at the Society of a group of persons that included an official of the Ministry of the Interior and an official of the Preventive Security Service. They presented him with an order issued by the Minister of the Interior, bearing the number 110 of 2008, informing him that persons who were not members of the Society had been appointed as an interim committee in order to administer and run the Society in place of its elected board, which was dismissed by the order. They took the keys to Society premises. Subsequently, the dismissed board members filed an appeal against the order of the Minister of the Interior before the

[48] These complaints were documented by the Commission and a list is annexed.

[49] The Commission held hearings for the relevant institutions on 20, 25, and 26 May 2010. Testimony was heard from Al-Haq, the Palestinian Independent Commission for Human Rights, the Palestinian Network of Non-Governmental Organizations and the Jerusalem Legal Aid Centre.

[50] Statement documented by the Commission and registered as No. j/D-35/2010, and statement documented by the Commission and registered as No. j/D-37/2010.

Palestinian Supreme Court. On 24 June 2009, the Court ruled that the order of the Minister of the Interior should be overturned. However, as of the date of the complainant's appearance before the Commission, the Ministry of the Interior had not complied with that ruling.[51]

334. Among the violations confirmed by the Commission was the closure of some associations ordered by the security services, which had prevented them from operating. The security services had threatened board members with arrest if they defied the order.

335. The chairman of one association testified that, on 29 May 2008, a General Intelligence unit shut down his association's headquarters and seized documents and other items. The Preventive Security Service also shut down a tailor's workshop attached to the association and seized its contents.

336. The same witness also testified that the closure order had been issued by General Intelligence headquarters in Ramallah on 28 May 2008 and executed the following day. A General Intelligence force raided the association, seized property and documents, and informed him that its activities had been banned and that any member of its board attempting to enter association headquarters would be arrested.

337. When the chairman of that association went to the Palestinian Ministry of Culture to enquire about the closure order he was informed that, because it was licensed, his association could continue to operate, but the Ministry could not guarantee the safety of any of its members. He was also informed by a Ministry official who dealt with associations that no order to close the association had been issued by the Ministry, and that the association's quarrel was with the security services. That official advised the association to solve its problem directly with the security services. As of the date of the chairman's testimony, the association remained closed. The General Intelligence Service confiscated the association's furniture, which, according to the witness, was subsequently used at the General Intelligence headquarters in Salfit.[52]

338. Other witnesses testified that the association's headquarters had been raided, all its documents seized, its operations banned, and its board members repeatedly summoned for interrogation. It was barred from operating by the Military Intelligence and Preventive Security Services. The association received no official written notice of closure or ban on operations. It was only informed orally. As of the date of that testimony, the association remained unable to open its headquarters or carry out its work.[53]

339. Some institutions that testified before the Commission also reported that the Ministry of the Interior had blatantly interfered in the activities and meetings of associations by insisting that it should be allowed to attend, supervise or monitor the associations' electoral processes and that the election results should be certified by the Ministry of the Interior.[54]

[51] Statement documented by the Commission and registered as No. j/D-27/2010.
[52] Statement documented by the Commission and registered as No. j/D-30/2010.
[53] Statement documented by the Commission and registered as No. j/D-28/2010. The same incident appears in a statement documented by the Commission and registered as No. j/D-29/2010.
[54] Statement documented by the Commission and registered as No. j/D-35/2010.

E. The Commission's findings on alleged violations of the right to form associations in the West Bank

340. The Commission conducted hearings at which both complainants and human rights organizations testified about violations of the right to form associations. An official interview was conducted with the Director of Public Relations and NGO Affairs of the Ministry of the Interior.[55] The Chairman of the Commission also met the Minister of the Interior, and the Commission considered the report submitted to the Commission by the Ministry of the Interior of the Palestinian National Authority on the Ministry's obligations with respect to the Goldstone report recommendations.[56] The Commission found that it was indeed the case that there had been violations and infringements of the freedom to form associations and that the Palestinian authorities had violated the provisions of the Law on Charitable Associations and Community Organizations and its implementing regulation in the following respects.

341. The orders from the Minister of the Interior appointing interim committees for some associations were not consistent with the provisions of the law. In particular, the committees in question were made up of persons who were not members of the associations. They were not appointed for a temporary one-month period for the purpose of conducting new elections for the association boards, and were therefore in violation of the Law on Charitable Associations and Community Organizations (No. 1 of 2000), article 22, paragraph 2, which provides that the Minister shall appoint a transitional committee from among the members of the general assembly in order to carry out the tasks of the board of directors for a period of time not exceeding one month, and to convene the general assembly within the same period of time in order to elect a new board of directors.

342. In the report which it submitted to the Commission, the Ministry of the Interior explicitly acknowledged the appointment of 20 interim association committees in 2009. However, the Commission was unable to assess the accuracy of that information.

343. In the course of shutting down the headquarters of some associations, the security services violated provisions of the Law on Charitable Associations and Community Organizations and, in particular, article 41, which prohibits seizure of the assets of any association or organization, or closing or conducting a search of its headquarters or any of its premises or branches without an order issued by a competent judicial body. In view of the fact that the closures, searches and seizures were done without an order from the competent judicial body, all such orders produced were null and void and illegal because they blatantly contravened the provisions of the Law.

344. Interference by the Ministry of the Interior in the conduct of association meetings was illegal. Such interference was in violation of the implementing regulation of the Law on Charitable Associations and Community Organizations, which explicitly prohibits the authorities from interfering with or influencing the conduct of an association's meetings, elections or activities.

345. The requirement that applicants wishing to found associations obtain security service approval was a violation of the provisions of the Law on Associations and its implementing regulation. Neither the Law nor the regulation includes such a requirement in the list of conditions for applicants

[55] Statement documented by the Commission and registered as No. j/D-31/2010.
[56] The report was submitted to the Commission on 20 April 2010.

registering an association. Moreover, the Commission regards the imposition of such a condition to be a blatant violation and infringement of the right of Palestinians to form associations, which is a constitutional right guaranteed by the Palestinian Basic Law as amended in 2003. This practice must be discontinued.

346. The requirement by the Ministry of the Interior that it be provided with annual administrative and financial reports also constitutes a violation of the provisions of the Law on Charitable Associations and Community Organizations. That Law, in article 13, explicitly identifies the government agency exclusively possessing the authority to require submission of such reports as "the competent Ministry," and for the Palestinian Ministry of the Interior to do so was therefore a violation of the provisions of the law.

347. The Commission took note in this regard of the implementing regulation of the Law on Associations, article 49, which provides that associations must submit their financial and administrative reports to the registration department of the Ministry of the Interior. That is a blatant violation of the provisions of the Law on Charitable Associations and Community Organizations, and that provision should be ignored or amended in order to make it consistent with the Law on Associations.

348. Proper exercise by Palestinians of their right to form associations requires that the Ministry of the Interior rectify these violations by ceasing all practices, measures or activities that go beyond its competence under the Law on Charitable Associations and Community Organizations and its implementing regulation.

VIII. Violation in the West Bank of freedom to assemble peacefully

A. The freedom of peaceful assembly under Palestinian legislation

349. The Palestinian Basic Law as amended in 2003 affirms that Palestinians have the right to participate in political life both as individuals and in groups. They have the following rights in particular:

1. To form, establish and join political parties in accordance with the law;

2. To form and establish unions, guilds, associations, societies, clubs and popular institutions in accordance with the law;

3. To nominate candidates and vote in elections in order to select representatives, who shall be elected by public ballot, in accordance with the law;

4. To hold public office and positions in accordance with the principle of equality of opportunity;

5. To conduct private meetings without the presence of police officers, and to conduct public meetings, gatherings and processions, within the limits of the law.

350. The Law on Public Assemblies (No. 12 of 1998), article 2, provides for the right of citizens freely to hold public assemblies, meetings and marches, and prohibits infringement of that right except in accordance with the restrictions provided for in that Law, which are as follows:

- The organizers of a gathering must send written notification to the governor or chief of police at least 48 hours prior to the scheduled time of the gathering;
- Such notification must be signed by at least three of the gathering's organizers and must specify the place, time and purpose of the gathering;
- The governor or chief of police may place restrictions on the duration of the gathering or route of the march for the purpose of maintaining the flow of traffic, provided that he inform the organizers of such conditions in writing within 24 hours of receiving the notification.

351. Palestinian legislation on freedom of assembly is consistent with international human rights law, and in particular with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, both of which explicitly include freedom of assembly among the basic rights and freedoms that States must provide to individuals.

352. The Universal Declaration of Human Rights, article 20, provides that everyone has the right to freedom of peaceful assembly and association. The International Covenant on Civil and Political Rights, article 22, provides that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

B. Alleged violations by the Palestinian authorities of the freedom of peaceful assembly

353. In order to gain a sense of the scope and nature of violations alleged by the Goldstone report in this regard, the Commission contacted all the Palestinian human rights institutions involved in observing and documenting such violations in the West Bank. It asked those institutions to supply the Commission with documented instances of infringement or violation by the Palestinian authorities of the right of Palestinians to assemble peacefully.

354. The reports received by the Commission from those institutions stated that a number of violations of the right to freedom of assembly had been committed by the authorities in the West Bank, notably, the Ministry of the Interior and the security services. The accounts contained in those reports of violations committed by the authorities in the West Bank may be summarized as follows.

355. On 28 December 2008, the security services in the city of Hebron attacked participants at a march held in solidarity with the Gaza Strip after the Israeli aggression. The march, in which various Islamic and national factions took part, began on Sunday, 28 December 2008 in front of Red Cross headquarters. A number of demonstrators displayed Hamas banners, prompting the security services to intervene. Security services personnel fired into the air after some demonstrators threw stones at members of the security forces. Several citizens were injured in the attack on them by security forces personnel, including former National Unity Government Minister Issa Khairi al-Jabari and citizen Nabil Issa al-Jabari.

356. On Friday 2 January 2009, the Hamas movement called for a march in solidarity with the Gaza Strip in response to the Israeli aggression there. The march was scheduled to begin after Friday prayers at the Al-Husayn ibn Ali Mosque in Hebron. As the worshippers were leaving the Mosque after Friday prayers, a paramilitary police unit arrived and prevented the march from proceeding towards the main road. Meanwhile, participants pelted police and security men with stones and injured more than 10 of them. A number of participants were also injured when security personnel beat them with batons in an attempt to break up the march. Several rounds of gunfire were fired into the air, but no gunfire injuries were reported.

357. On 2 January 2009, families of prisoners being detained by the Palestinian National Authority in Hebron Governorate held a protest in front of the military checkpoint north of the Hebron Government office building at approximately 11.15 a.m. The protestors held signs demanding the release of their relatives. In the meantime, a military force comprising several security services arrived and a women's military force was called. The protest was broken up when the protesters were attacked with batons and sprayed with gas, which caused numerous casualties. Citizen Lami Khatir was detained.

358. On 2 January 2009, national and Islamic forces held a peaceful demonstration in Ramallah in solidarity with the people of the Gaza Strip and in protest against the Israeli attack on Gaza. During the march a number of participants raised Hamas flags. Palestinian security forces intervened and used force to break up the march. A number of participants were injured and some 20 persons were arrested.

359. On 5 January 2009, the student bodies at Birzeit University organized a peaceful demonstration which proceeded from the campus of the university towards the Attara intersection, where the occupying forces maintained a military checkpoint. When at least 400 male and female students reached the

centre of the town of Birzeit, Palestinian security forces attempted to prevent them from continuing to the Israeli checkpoint. The participants clashed with the security forces, which resorted to force in order to disperse the gathering. As a result, at least 50 male and female students were injured.

360. As regards alleged violations of freedom of assembly, the Commission received a single complaint, from Mr. Issa al-Ja'bari, who declined to attend the hearing convened by the Commission. The representatives of human rights organizations heard by the Commission referred to individual acts and violations carried out by certain members of the security services in attendance at peaceful gatherings. However, the situation has effectively prevented the Commission from forming a firm conviction regarding the nature of the violations of freedom of assembly. Nevertheless, the Commission believes that the following points must be stressed:

- The Palestinian authorities should respect freedom of assembly. They should allow and facilitate its exercise in accordance with the obligations and procedural principles established by law;
- The authorities and the security services should operate on the assumption that peaceful gatherings are a right and a fundamental freedom. The security services should be present in order to protect participants and facilitate their movement, rather than to restrain them;
- Any attempt on the part of the authorities to prevent or hinder the exercise of that right through restrictions or procedures not provided for by law constitutes a violation of the right to freedom of assembly;
- Human rights organizations have alleged that violations were committed by the security services in dispersing peaceful gatherings. However, the authorities have not effectively investigated the allegations, and have not responded in earnest to the reports, statements and comments of human rights organizations.

IX. Detention and torture in the Gaza Strip

361. Hamas forcibly seized power and took control of the Gaza Strip on 14 June 2007. Since then, that Palestinian territory has been controlled and administered by Hamas and its armed forces and groups, particularly the Izz al-Din al-Qassam Brigades. The Brigades were especially prominent in the first few months, as Hamas sought to impose and consolidate its control of the Gaza Strip. The Brigades clearly assumed a security role, taking fundamental responsibility for law enforcement, arrests, imprisonment, questioning and prosecution. During that phase, the Brigades administered a number of imprisonment and detention centres.

362. Since those events, the Palestinian territory has been controlled and governed by two administrations. The official Palestinian administration, represented by the Palestinian National Authority and its institutions and security apparatus, continued to govern the West Bank, or what is known in Palestinian terms as the northern governorates. The Gaza Strip, which is known as the southern governorates, fell under the control of Hamas and elements of the armed forces, administration and parties affiliated to or supportive of Hamas.

363. After Hamas took power, a series of events convulsed the Palestinian territories, and both sides perpetrated violations. As a result, respect for human rights and freedoms deteriorated.

364. Both sides curtailed and infringed several rights and freedoms, including the right to life; the right to freedom of opinion and expression; the right to assume public office; the right to freedom of association; the right of peaceful assembly; the right to respect for private life; the right to liberty and security of person; the right not to be subjected to arbitrary arrest or detention; the right not to be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence; the right not to be subjected to torture or to degrading treatment that violates human dignity; the right to receive and impart information; and freedom of the press. These and other rights were frequently and repeatedly violated by both sides on the pretext that the situation was extraordinary, or that certain measures were necessary in order to preserve security and public order in the areas under their control.

365. In terms of implications and repercussions, what is happening and being decided in the Gaza Strip goes beyond the conduct of domestic affairs. In practice, it would be closer to the truth to state that a new, independent system of government and institutions is being formed. A number of facts point towards that conclusion:

- The de facto authority in the Gaza Strip has refused to recognize or comply with decisions and orders issued by the President and administration of the Palestinian National Authority;
- The military and security institutions of the Palestinian National Authority have ceased to fulfil their duties in the Gaza Strip. Their authority has been assumed by Hamas, its Executive Force, and the internal security forces, which were reformed under new leadership after Hamas had seized power;
- All security and military installations under the Palestinian National Authority have been taken over by the Izz al-Din al-Qassam Brigades;
- The leadership of the Palestinian police force has been replaced, and connections with the official police force in the West Bank severed;

- Senior officials have been isolated and replaced with Hamas sympathizers. Public sector institutions and structures have been reformed in accordance with the wishes and orientation of Hamas;
- The Palestinian judicial authority has been placed under new leadership. A Supreme Justice Council independent from that of the Palestinian National Authority has been formed. The new body has been tasked with administering the judiciary and supervising appointments, promotions and similar functions. Judges at courts in the Gaza Strip have been replaced with individuals affiliated to Hamas. A new head of the Supreme Court of Gaza has been appointed. The legal system of Hamas is now independent from the legitimate judiciary;
- The Palestinian Public Prosecutor was relieved of his functions with immediate effect and, in violation of his prerogative for staffing and supervision, the Office of the Public Prosecutor has been staffed with individuals loyal to Hamas.

A. Parties responsible for preserving security in the Gaza Strip

366. After forcibly seizing power, Hamas took control of the security apparatus and, in particular, the intelligence and preventive security services. A new body known as the Internal Security Agency was formed with responsibility for law enforcement throughout the Gaza Strip. The Agency, which is part of the de facto Ministry of the Interior, is staffed with Hamas sympathizers and elements of the Izz al-Din al-Qassam Brigades and Executive Force,[57] the latter having been merged with the newly formed Interior Security Agency. The Agency also incorporated members of the original security forces and army who chose to

[57] On 20 April 2006, the Minister of the Interior of Palestine decided to form a new security service, the Executive Force, under his direct control. Its function was to assist him in reining in the state of anarchy and restoring peace and public order. The establishment of the Executive Force sparked a major crisis in relations between the Presidency and the Government. The President rejected the Force and issued a presidential decree explicitly refusing to recognize or cooperate with it.

The decree in question, Presidential Decree No. 28 of 2006, reads as follows:

> The Chairman of the Executive Committee of the Palestine Liberation Organization, President of the Palestinian National Authority, Commander-in-Chief of the Palestinian Forces,
>
> Having considered the Palestinian Basic Law of 2003 as amended and the Law of 2005 concerning service in the security forces,
>
> Acting in the public interest and in exercise of his prerogatives,
>
> Decrees as follows:
>
> *Article 1*
>
> The decision of the Minister of the Interior dated 20 April 2006, which establishes a new security force comprising armed resistance groups under his direct responsibility, is hereby revoked. That decision contravenes the Law of 2005 concerning service in the security forces, article 3, which states that any new security force must form a part of the three agencies specified therein.
>
> *Article 2*
>
> The decision of the Minister of the Interior dated 20 April 2006 concerning appointments and promotions of officers is revoked. According to the Law of 2005 concerning service in the security forces, articles 19 and 20, the Minister does not have the authority to make such appointments and promotions. That Law entrusts that task to the Committee of Officers, whose decision is binding once it is endorsed by the President of the Palestinian National Authority.
>
> *Article 3*
>
> All leaders, officers, non-commissioned officers and members of the security forces are requested not to comply with the decisions specified in articles 1 and 2, and to consider them null and void.
>
> The concerned parties are requested to take all necessary steps in order to implement the provisions of this Decree, which shall be binding from the date of its issuance and shall be published in the Official Gazette.

retain their positions. However, they were required as a precondition to sever all ties to the Government in the West Bank.

367. As events in the Gaza Strip have shown, the Internal Security Agency is assisted in enforcing the law by elements of Hamas and, in particular, the Izz al-Din al-Qassam Brigades, which are the primary military wing of Hamas. Those forces have been called upon in particular situations, notably when the security and stability of the de facto authority are threatened.

368. The Internal Security Agency fulfils the following functions in the Gaza Strip:

- Preserving public order and security; protecting life, property and assets;
- Preventing, detecting and investigating crime; arresting and prosecuting offenders;
- Administering prisons and guarding prisoners;
- Enforcing laws, regulations and orders; assisting the authorities in the fulfilment of their duties in accordance with the law;
- Directing and policing road traffic;
- Supervising gatherings and processions in streets and public places.

B. Legislation setting forth the duties of law enforcement officials in the Gaza Strip

369. The de facto authority in the Gaza Strip has continued to enforce the legislation enacted before the split. The following are still applicable: Law No. 8 (2005) concerning service in the security forces, which sets forth the mission, duties and obligations of security forces in the Gaza Strip; Law No. 6 (1998) concerning reform and rehabilitation centres (prisons); Law No. 12 (1998) concerning public gatherings; the Palestinian Code of Criminal Procedure (Law No. 3 of 2001); the Revolutionary Penal Code (1979) of the Palestine Liberation Organization; and (Law No. 74 of 1936 as amended), the Penal Code that was in force under the British Mandate.

370. In the second half of 2008, members of the pro-Hamas Change and Reform Bloc in the Legislative Council of the Gaza Strip issued the Law of 2008 concerning criminal procedure in the army, which is currently enforced by military courts in the Gaza Strip.

C. Conditions for arrest and detention under current legislation and international instruments

371. As has been explained, the de facto authority in the Gaza Strip continues to apply the provisions of the Palestinian Basic Law; the Code of Criminal Procedure (Law No. 3 of 2001), Law No. 6 (1998) concerning prisons, and the Law concerning service in the security forces. As a result, the security services in the Gaza Strip remain bound by the conditions for arrest, detention and imprisonment set forth in the Code of Criminal Procedure.

372. The de facto authority in the Gaza Strip must therefore comply with all of those provisions. In particular:[58]

- No person may be subjected to coercion or torture. All persons deprived of their freedom shall receive appropriate treatment;
- Individuals may be arrested or imprisoned only pursuant to an order issued by the competent authority;
- Law enforcement officials must take statements from arrested individuals immediately. If there is no justification for their release, they must be transferred to the competent deputy public prosecutor within 24 hours;
- Homes may be entered and searched only with a warrant issued by the Office of the Public Prosecutor, or in the presence of a member of the Office. The resident of the home must have been accused of perpetrating or being an accessory to a crime or offence. Alternatively, there should be strong evidence that the individual is concealing objects connected with a crime;
- The Office of the Public Prosecutor has sole responsibility for prosecutions. The Code of Criminal Procedure, article 99, states that the deputy public prosecutor must conduct a physical inspection of the suspect prior to questioning, document any visible injuries and establish their cause;
- Suspects are entitled to legal representation during the investigation;
- After the prisoner has been questioned, the Office of the Public Prosecutor may request that the competent court extend his detention in accordance with the law;
- Law enforcement officials must immediately convey the detainee to a police station. Where there is no warrant, the prison official who takes the detainee into custody must immediately ascertain the reasons for detention. Such custody shall in no event exceed 24 hours, and the Office of the Public Prosecutor shall be notified immediately;
- Individuals may be detained or imprisoned only in a prison or in a legally specified place of detention. Prisoners may be accepted only pursuant to an order from the competent authority, and may not be detained beyond the period specified in the order;
- If it is decided that a detainee should be released on bail, the official responsible or the director of the prison shall release him, provided that he has not also been arrested or detained on some other charge;
- Prisons must be inspected. The Code of Criminal Procedure provides that the Office of the Public Prosecutor and the heads of the courts of first instance and courts of appeal shall inspect prisons and other places of detention under their jurisdiction in order to ensure that no person is unlawfully imprisoned or detained. They shall examine and make copies of the prison records and detention orders. They shall make contact with inmates in order to hear any grievances. Directors and officials shall offer them every assistance in obtaining the information sought.

[58] The guarantees incumbent on the de facto authority in the Gaza Strip are the same as those set out in the section on detention and torture in the West Bank. In order to avoid repetition, specific references have not been included.

373. The conditions set forth in international instruments, specifically, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment, continue to apply to arrest and imprisonment procedures in the Gaza Strip.[59]

374. The Commission believes that the de facto authority in the Gaza Strip has a duty and a responsibility to respect the obligations referred to, for a number of reasons, including the following:

- The Basic Law of Palestine incorporates most of those obligations. It follows that many of those safeguards have become binding as a part of domestic legislation. The de facto authority in the Gaza Strip must therefore respect and enforce them;
- The principles enshrined in those instruments have acquired force of law. This applies specifically to the right to life and human dignity, and to the prohibition of torture and other degrading treatments that violate human dignity. Such principles are incumbent on all the international contracting parties, i.e. States, and also on other parties, including the de facto authority in the Gaza Strip, which cannot use the pretext that it is not a party to those agreements and has not declared its commitment to them;
- In the Declaration of Independence, which is a constitutional document, the Palestine Liberation Organization announced its adherence to the Universal Declaration on Human Rights. The latter is therefore binding on Palestinians, including Hamas, which participated in legislative elections in accordance with domestic law, the Basic Law, the Oslo Accords and the Declaration of Principles concluded between the Palestine Liberation Organization and the Israeli side.

375. In view of Hamas's forcible seizure and exercise of power, the Commission believes that events in the Gaza Strip constitute internal armed conflicts as defined by the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), concluded in 1977. Protocol II, article 1, reads as follows:

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

376. The Commission believes that Hamas, having seized, taken over and subsequently exercised effective power in the Gaza Strip, is committed not only to the aforementioned instruments, but also to the safeguards provided for in Protocol II as binding international law.

[59] Those guarantees and conditions have been described in the section regarding detention and torture in the West Bank. In order to avoid repetition, they are not repeated here.

377. Article 4 of the Protocol states as follows:

> 1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.
>
> 2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:
>
> (a) Violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
>
> (b) Collective punishments;
>
> (c) Taking of hostages;
>
> (d) Acts of terrorism;
>
> (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
>
> (f) Slavery and the slave trade in all their forms;
>
> (g) Pillage;
>
> (h) Threats to commit any of the foregoing acts.
>
> 3. Children shall be provided with the care and aid they require, and in particular:
>
> (a) They shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
>
> (b) All appropriate steps shall be taken to facilitate the reunion of families temporarily separated;
>
> (c) Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;
>
> (d) The special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured;
>
> (e) Measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.

378. Moreover, Hamas must respect and comply with the following safeguards contained in article 6 of the Protocol:

> 2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction

pronounced by a court offering the essential guarantees of independence and impartiality.

In particular:

(a) The procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) No one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) Anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) Anyone charged with an offence shall have the right to be tried in his presence;

(f) No one shall be compelled to testify against himself or to confess guilt.

3. A convicted person shall be advised on conviction of his judicial and other remedies and of the time limits within which they may be exercised.

4. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

D. Human rights violations perpetrated by Palestinian security services during arrest and detention

379. In order to obtain an idea of the nature and scale of the violations alleged in the Goldstone report, the Commission contacted all of the Palestinian human rights institutions that have, in its opinion, reliably observed and documented the violations in the Gaza Strip and the West Bank. These included the Palestinian Centre for Human Rights, the Al-Mezan Centre and the Al-Dameer Association for Human Rights in the Gaza Strip. The Commission also contacted human rights institutions active in the West Bank which have documented the human rights situation in the Gaza Strip, including Al-Haq, the Al-Dameer Association, the Independent Commission for Human Rights and the Jerusalem Legal Aid Centre. The purpose was to provide the Commission with all information that had been collected and documented by those institutions, in addition to their reports, statements and contributions.

380. All the reports, testimonies and statements received by the Commission from those organizations are in agreement that law enforcement officials of the de facto authority in the Gaza Strip committed violations in the performance of arrests and detentions. Reports and statements noted that the security services in the Gaza Strip had committed a number of violations in the performance of

arrest, detention and investigation procedures, which may be summarized as follows:

1. Such arrests were linked to the Palestinian political situation, in that the detainees were affiliates, supporters or sympathizers of the Palestinian National Liberation Movement (Fatah);

2. Law enforcement officials in the security services of the Gaza Strip, in the majority of cases of arrest and detention, failed to respect due legal process;

3. Detainees were mistreated and subjected to cruelty;

4. Detainees were not referred to the Office of the Public Prosecutor within the statutory time limits prescribed by the Palestinian Code of Criminal Procedure;

5. Civilian detainees were brought before military courts;

6. Detainees were subjected to torture and other forms of humiliating and degrading treatment as a means of extracting confessions regarding acts ascribed to them or to others.

E. Complaints received by the Commission concerning detention-related violations

381. The Commission received complaints from human rights organizations, parliamentary blocs, relatives of detained persons and released detainees concerning arrest and detention-related human rights violations by law enforcement officials in the Gaza Strip. Eleven complaints were submitted directly by individuals in the Gaza Strip.[60]

382. After reviewing and studying the above-mentioned complaints and their attachments, the Commission found that the claims were substantiated. The individuals heard by the Commission via videoconference[61] from the Gaza Strip stated that officials had committed the following violations.

383. Law enforcement officials belonging to the Internal Security Service did not identify themselves; they wore masks while conducting raids, searches and arrests.

384. The majority of the complainants heard by the Commission in connection with imprisonment, torture and killings referred to that practice. One of the witnesses said: "I was imprisoned on 12 February 2009. I was taken from in front of my house by masked Internal Security men armed with handguns. They took me in a green Jeep Magnum, a military vehicle."[62]

385. Another witness said: "On the day of the ceasefire after the Gaza conflict, six masked youths attacked a supermarket owned by my brother. They took my brother and vandalized the supermarket. About a quarter of an hour later, they came to the house where my brother and I live".[63]

386. Another complainant said: "A dozen or so masked men in civilian clothes came to my house. I was not at home at the time. My father met them and said that I was not there. He sent my brother to fetch me and I came home. They

[60] These complaints were documented by the Commission and a list is annexed.
[61] The Commission spoke to 11 individuals about complaints regarding detention.
[62] Statement documented by the Commission and registered as No. T-ayn-ghayn-1/2010.
[63] Statement documented by the Commission and registered as No. T-ayn-ghayn-2/2010.

told me that they had come for me. When my father asked them to identify themselves, they showed their Internal Security identification".[64]

387. Another statement said: "At about 1 a.m., I was awoken by unusual knocking on the door. I went and asked who was knocking. They said it was the police and told me to open the door. I did so, and four individuals came in. They were wearing masks with only their eyes showing. They were armed with Kalashnikovs, and one of them had a handgun. I asked them what they wanted; they said they wanted to search the house".[65]

388. Individuals were imprisoned and detained in places other than those designated by law. Some were held in a mosque. Others were held and questioned in hospitals, homes and undisclosed locations.

389. One of the testimonies states as follows: "On 17 January 2009, some Internal Security agents came to my house with a search warrant from Internal Security. They searched the house, then took me away with them. They told my wife: 'We will bring him back in half an hour'. I found the house surrounded by over 20 individuals, some of them soldiers and some civilians, all wearing black masks. A man took me away and said, 'Do you know in whose company you are?' I answered, 'Internal Security'. They took me to a place called Ali Ibrahim Wadi. Before I arrived, they pulled a mask over my head and the questioning began. They questioned me on the charge that I was collaborating with the Ramallah Government. They accused me of spying on the Al-Qassam organization and sending reports to that Government. All of them beat me from every direction".[66]

390. Another account states as follows: "They said to me, 'Hamada, we want you for five minutes'. When my father asked for their identity, they showed Internal Security cards. They took me on foot to the road that runs by the building site. There, they pulled my jacket over my head and took me to an abandoned house. I do not know who owned it. They said, 'You have five minutes to confess to how you got the weapons you have'. They started to hit my face and whip my legs. They kept hitting me continuously for 30 to 45 minutes, then they brought me out and told me I was under house arrest for three months".[67]

391. All the security agencies, whether or not they are legally authorized to make arrests, failed to respect the Palestinian Code of Criminal Procedure, which provides that no arrest warrant may be executed without a court order. Rather, individuals were brought to security headquarters by force or seized in raids. On other occasions the person was summoned by telephone to a meeting with the security body, whereupon he was immediately apprehended and arrested.

392. When entering and searching homes, the security services did not respect the requirement to show judicial orders. Numerous homes were broken into and searched without any such order being shown, which constitutes a clear violation of the sanctity of those homes.

393. Legal provisions governing the duration of custody were violated. In ordinary circumstances, as previously mentioned, the pertinent Palestinian laws allow the authorized agency to detain and arrest persons for a period of 24

[64] Statement documented by the Commission and registered as No. T-ayn-ghayn-3/2010.
[65] Statement documented by the Commission and registered as No. T-ayn-ghayn-6/2010.
[66] Statement documented by the Commission and registered as No. T-ayn-ghayn-6/2010.
[67] Statement documented by the Commission and registered as No. T-ayn-ghayn-3/2010.

hours. After that period, the arrested person must immediately be released or transferred to the Office of the Public Prosecutor or the competent court in order for their status to be determined.

394. In the majority of cases of arrest which it documented, the Commission found that the security services ignored those time limits and did not observe the binding legal provisions. Many persons were detained for periods longer than those provided by law. Moreover, none of the detainees were brought before the Office of the Public Prosecutor or the competent court.

395. Violence, abuse, beatings and humiliation occurred during imprisonment. In many cases, the security services of the de facto authority in the Gaza Strip treated prisoners in a degrading manner that violated human dignity. Force and violence were used. As shown by the statements obtained by the Commission from arrested persons or their relatives concerning the facts surrounding arrest, the Palestinian security services in general did not comply with the rules and criteria governing arrests, in particular those relating to proper treatment and the avoidance of beating, degradation and recourse to violence.

396. One of the testimonies heard by the Commission states as follows: "On 18 January 2009 at 9 p.m., two policemen came to my home. They said, and I quote: 'You are being asked for by the Chief of Police'. I went with them, as I thought, to the police station, but found that I was in fact being taken to the premises of the Red Crescent in Khan Younis. Before I arrived there, they told me that police headquarters had moved. They then took me to another place, the new housing units in the Al-Amal neighbourhood. Ten minutes later, a group of masked men arrived and took me to a place some 30 metres away from the housing units. The masked men, 15 or so people, began to beat me with truncheons. They did not say anything or accuse me of anything. After they had beaten me for about half an hour, they called a Red Crescent emergency vehicle, which took me, along with another person who had been beaten, to the Nasser Hospital".[68]

397. Another testimony states as follows: "After the war and the Israeli attack of January 2009, my house in Izbat Abd Rabbo, in east Jabaliyah, was destroyed by the Israelis. They stationed themselves in a part of the house. I was in the house with my wife, my 25-year-old disabled son and my other children. When the war ended and the Red Cross let me leave, I left the house and stayed with in-laws in the Sheikh Radwan area. I was not able to obtain clothes for myself or my family, so I borrowed some clothes from volunteers in Sheikh Radwan. The clothes were threadbare, and made me look suspicious and different from the locals. I was approached by four individuals in civilian clothes who refused to identify themselves. They were carrying wireless devices and driving a Skoda marked as a taxi. They blindfolded me and took me to an undisclosed location, where I was interrogated for five days. During that time, a number of accusations were made against me, notably that I was collaborating with Ramallah and Israel, on the grounds that there were Umm al-Fahem, Abu Dhabi and Ramallah numbers in my mobile phone. I denied all of the accusations during the questioning. Only one kind of food was brought to me. I was kept blindfolded with my hands tied, which was torture. My feet were tied throughout the day except during meals. I was allowed to go to the toilet once a day. The worst torture was that none of my relatives or family

[68] Statement documented by the Commission and registered as No. T-ayn-ghayn-7/2010.

knew where I was. However, I was not verbally abused, hit or humiliated. The greatest surprise came after five days, when they apologized to me".[69]

398. As regards torture resulting in death, the accounts heard by the Commission show that numerous detainees were beaten, tortured or treated in a manner that violated their human dignity, in order to extract information or confessions regarding their own or other peoples' actions or words.

399. It is clear from those accounts that the security services in the Gaza Strip used extremely harsh methods of extracting information and confessions. Those methods resulted in the deaths of a number of prisoners, including one Jamil Nasr. The victim's mother, Nuha Issa Assaf of the Al-Daraj neighbourhood, Gaza City, made the following statement: "My son was less than 20 years old. Jamil was working in the tunnels. They imprisoned him on 9 March 2009. We have a neighbour named Muhammad Isam Abu Thurayya; the people who imprisoned him were the judicial authorities investigating the theft of 130,000 shekels from Muhammad. They accused some other people alongside my brother, and took him to the 'Abu Musa Halas Cafe', a torture centre in the Al-Daraj neighbourhood. The investigators tortured him in order to make him confess, using every form of torture. They kept him for four days. During all of that time, he was tortured and denied food and drink. On 12 March 2009, he was moved to the Al-Tuffah police station. My son was in a very bad state. We went to the Al-Tuffah police station on the Friday to visit him. They let us see him for 10 minutes. Whenever I looked at him, he would put a hand over his head. He told us that he was vomiting his food and that there was blood in his urine. We asked the policeman who was present to take him to hospital. After my husband threatened to go to the Red Cross, he was brought under guard to the Al-Shifa Hospital in Gaza City and placed in intensive care. He was losing consciousness, and the Hospital was carrying out dialysis because he had suffered kidney failure. He remained in that condition for 12 days, and then died despite an attempt to resuscitate him. That was on Monday at 2 a.m. The corpse was autopsied on the order of the Office of the Public Prosecutor and without our permission. We have obtained a medical report, which I will provide to the Commission, stating that he died as a result of torture".

F. Opinion of the Commission regarding arrest and detention procedures in the Gaza Strip

400. It transpires from the cases of imprisonment in the Gaza Strip which were documented by the Commission that law enforcement officials frequently went beyond, and indeed violated, the applicable conditions and safeguards. On the basis of the Commission's hearings, in addition to the reports and information provided by Palestinian human rights organizations, particularly significant points emerge that are set forth below.

401. On the basis of those hearings, reports and documents, the Commission believes that the security services of the de facto authority in the Gaza Strip imprisoned sympathizers of Fatah and others in reaction to the political disagreement between Fatah and Hamas. Most of those arrests proved to be motivated by political considerations, and therefore constitute arbitrary and unlawful imprisonment.

402. It is clear from the hearings that most of the complaints of mistreatment and abuse involved the Internal Security Service in the Gaza Strip.

[69] Statement documented by the Commission and registered as No. T-ayn-ghayn-9/2010.

403. It is clear that the Office of the Public Prosecutor of the Gaza Strip was remiss in performing the role entrusted to it by law, because it was incumbent on the members of the Office, under article 126 of the Palestinian Code of Criminal Procedure, to inspect prisons and other places of detention under their jurisdiction in order to ensure that no person is unlawfully imprisoned or detained. They are also responsible for consulting and making copies of prison records and detention orders and for contacting inmates and hearing any grievances. Moreover, the directors and officials shall offer them every assistance in obtaining the information sought.

404. Consequently, it was incumbent on the Office of the Public Prosecutor of the de facto authority in the Gaza Strip not only to intervene in order to prevent any arrest or detention that fell outside the remit of the prisons, but also to initiate public prosecutions against anyone in breach of these conditions as the perpetrator of a crime. It has also been established that the Office of the Public Prosecutor failed to intervene in order to prevent members of the security apparatus and other armed groups from usurping the prerogatives of the powers which, under the law, had the status of judicial police. Such practices became widespread.

405. It is clear that violations of human dignity, including treatment during arrest, beating, abuse, humiliation and the subjection of arrested persons to torture or to physical or psychological pressure in order to obtain information or confessions were not isolated cases of individual conduct in the detention and investigation centres of the Internal Security Service. Such practices occurred in all of the cases of arrest and detention documented or heard by the Commission. They therefore appear not to have been limited to an individual or a specific area; they were used universally in order to manage detainees, conduct investigations and obtain confessions. The Internal Security Service has thus breached the provisions of the Palestinian Basic Law, article 13, which affirms that no person shall be subject to coercion or torture and that all persons deprived of their freedom shall receive appropriate treatment.

406. Law enforcement services in the Gaza Strip used numerous forms and methods of torture, including the following:

- Severe beatings delivered with hands, feet and truncheons;
- Collective beating of the detainee, with more than one person involved in the beatings and other acts of aggression;
- Whipping with water hoses;
- *Shabah*, where the detainee's hands are tied behind him and pulled up by fastening the bonds to a door, window or other object, so that the person subjected to this form of torture remains virtually suspended in the air, a process that may last for periods of varying duration, even several days in succession, the person being granted brief periods of respite;
- Threats and intimidation;
- Detention in cramped cells measuring roughly 1 metre by 2 to 3 metres;
- Beatings on the soles of the feet with sticks, done by shackling and raising the detainee's feet, whereupon he is beaten with sticks or clubs for variable lengths of time, then required to walk in order to obscure the blood congestion resulting from the beating.

407. Lack of effective supervision of detention centres contributed to the scale and frequency of torture. The Commission has found that the parties legally

responsible for detention centres administered by the Intelligence and Preventive Security Services did not exercise effective supervision.

408. The Commission believes that the lack of genuine, effective accountability for agents guilty of torture and unlawful detention encouraged the widespread use of torture.

409. The Commission therefore believes that the de facto authority in the Gaza Strip must recognize and fulfil its responsibilities to hold accountable and prosecute all who break the law with regard to arbitrary and illegal arrests and the crime of torture and other forms of harsh and degrading treatment.

X. Violation of the right to life in the Gaza Strip

410. In the Palestinian Basic Law as amended in 2003, the right to life does not receive the attention given to the other basic rights and freedoms set forth in chapter II. In our view, that is one of the shortcomings of the Basic Law. The right to life is the original right from which all other human rights are derived; its omission or denial detracts from their value.

4111.The right to life and personal safety is inherent, and may not be infringed in any circumstance, even when society or the State is affected by an extraordinary event.

412. The right to life is enshrined in international human rights instruments. The Universal Declaration of Human Rights, article 3, states that everyone has the right to life, liberty and security of person. The International Covenant on Civil and Political Rights, article 6, provides that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

413. Human Rights Committee General Comment No. 6, adopted at the Committee's sixteenth session in 1982, states that the right to life enunciated in article 6 of the Covenant is the supreme right from which no derogation is permitted even in time of public emergency. It is the foundation on which all other human rights depend.

414. In order to obtain an idea of the nature and scale of the violations alleged in the Goldstone report, the Commission contacted all of the Palestinian human rights institutions that have, in its opinion, reliably observed and documented the violations in the Gaza Strip and the West Bank. These included the Palestinian Centre for Human Rights, the Al-Mezan Centre and the Al-Dameer Association for Human Rights in the Gaza Strip. The Commission also contacted human rights institutions active in the West Bank which have documented the human rights situation in the Gaza Strip, including Al-Haq, the Al-Dameer Association, the Independent Commission for Human Rights and the Jerusalem Legal Aid Centre. The purpose was to provide the Commission with all information that had been collected and documented by those institutions, in addition to their reports, statements and contributions.

415. The reports, testimonies and accounts provided by those organizations are all in agreement that dozens of killings took place in the Gaza Strip. The 2009 report of the Independent Commission for Human Rights refers to 22 extrajudicial killings and 23 killings in unclear circumstances.[70] Al-Haq states that 33 individuals were killed during the first four months of 2009.[71]

416. Analysis of incidents monitored and documented by these organizations shows that violation of the right to life in the Gaza Strip has taken various forms, including the following:

- Direct killing and extralegal and extrajudicial executions by law enforcement agencies in the Gaza Strip or by armed groups affiliated to the de facto authority in the Gaza Strip, targeting persons charged with committing certain acts or convicted by the military and civil courts;
- The arrest of individuals and their liquidation, after interrogation, by agencies affiliated to the de facto authority in the Gaza Strip.

[70] Annual report of the Independent Commission for Human Rights, p. 68 et seq.
[71] Al-Haq provided a report giving the names of the victims.

A. Complaints received by the Commission concerning violations of the right to life

417. The Commission received a series of complaints from Palestinian human rights organizations, parliamentary blocs and victims' relatives concerning violation of the right to life in the Gaza Strip by security agencies affiliated to the de facto authority in the Gaza Strip or by groups affiliated to Hamas.

418. After reviewing and studying of the substance of those complaints and their attachments and the hearings held for victims' relatives,[72] it became clear to the Commission that there is evidence to support the truth of allegations of violation of the right to life by the security services affiliated to the de facto authority in the Gaza Strip. The statements of persons in the Gaza Strip, which the Commission heard via videoconference,[73] affirm that the security services in the Gaza Strip, the Izz al-Din al-Qassam Brigades and other armed groups affiliated to the de facto authority have committed violations of the right to life.

B. Opinion of the Commission regarding violations of the right to life

419. After analysing everything uncovered by the hearings held for the relatives of murder victims, the Commission is of the view that the law enforcement agencies in the Gaza Strip carried out widespread extralegal executions during the Israeli assault on the Gaza Strip.

420. Extralegal and summary execution is defined as the execution of political opponents or persons suspected of committing an offence by armed forces, officials or groups supported by Government agencies, without prior judicial measures. The phrase, "extralegal and summary execution" includes arbitrary execution, whether for political reasons or for religious or ideological reasons.

421. Review of the murder of numerous individuals in the Gaza Strip indicates that the description of extralegal execution clearly applies.

1. The targeted killings of convicted persons by the security services affiliated to the de facto authority in the Gaza Strip

422. Numerous testimonies heard by the Commission affirm the reality of targeted killings. In his statement, the father of one victim said, "... Akram was killed during the Israeli assault on Gaza ... They sent word to us to go to Al-Shifa Hospital in Gaza, where I identified Akram's body in the mortuary. I found six bullet holes in his chest and head. I did not see who fired the shots but he was a prisoner in Saraya prison in Gaza ... He had been sentenced to death before Hamas seized power ...".[74]

423. The father of another victim stated, "... On 26 March 2003, my son was arrested by the authorities on suspicion of having committed murder. He was tried and sentenced to death the same year, having been accused of three murders. He was tried by a civil court, the Gaza Court of First Instance. My son was held at Saraya prison, awaiting execution. The verdict was appealed before the Court of Cassation which, to date, has not delivered its ruling. On 28 December 2008, during the Israeli assault on Gaza, the Saraya facility was bombed by the Israelis,

[72] The Commission held 17 hearings for the relatives of murder victims.
[73] The Commission heard the testimony of 11 persons concerning complaints relating to murder.
[74] Statement documented by the Commission and registered as No. q-gahyn-21/2010.

after which my son escaped with other prisoners and came home. After a few days, he went to the Rafah area, where the Internal Security Service arrested him on 20 January 2009. He was held until 21 January 2009, when he was executed with another person, by the name of Said Zaghl. His body was taken to Al-Shifa Hospital. He had a bullet hole behind the ear. An autopsy was conducted by the pathologist at the hospital, who stated that he had been killed by a bullet that was lodged in his brain. The pathologist and prosecutor's office refused to provide us with a report determining the cause of death ...".[75]

2. The targeted killing of accused persons by the de facto authority in the Gaza Strip

424. Numerous testimonies heard by the Commission substantiate allegations of such killings.

425. The wife of a victim of execution stated the following: "... My husband was arrested about a year and a half before the war and charged with spying for Israel. He confessed under torture and remained in custody. He was being held at Saraya when the war began. When the Israelis bombed Saraya, he was injured when a wall fell on his shoulder and leg, causing bleeding, and he was taken to hospital. While he was receiving treatment there, three persons dressed in military uniform appeared and shot him in the head. The hospital was full of people and it was in full view of the police. I was in the hospital, at reception, and heard the shot fired. I went to the place and found him lying on the bed with two shots to the head, one in his forehead and the other close to his nose. The gunmen were unmasked but I do not know which faction they belonged to ...".[76]

426. The statement of the wife of another victim included the following: "... My husband's brother received an anonymous call, telling him, 'Go and look for your brother where he has been dumped.' Following this call, we went out to look for him. Eventually, we were told that there were bodies at Al-Shifa Hospital, so we went to the hospital mortuary and found my husband there, with three bullet holes in his head, abdomen and chest ... Previously, on 29 January 2009, my husband had called to say that he was in a safe place and in safe hands. In 2008, my husband had been charged with murder and acquitted by the court but was taken back to prison a few days after his release, on 22 October 2008. When I checked with the legal affairs section at Saraya prison, they told me that they suspected my husband was an Israeli agent. Forty days later, I visited my husband and they told me that he was an Israeli agent. On ... I received notification from the military judiciary that I had to present myself to them. They interrogated me and told me that my husband had enemies whom they suspected of the murder. It is my belief that the Internal Security Service killed my husband ...".[77]

427. One of the complainants heard by the Commission stated the following: "... He was to have appeared before the court but no verdict had been delivered by the time of the Hamas takeover in Gaza. After the coup, he was acquitted and released. He was shown on television saying that he had been unjustly treated. He stayed at home for eight months. Then they arrested someone who informed against my son. He was arrested and taken back to prison, where he was at the time of the assault on Gaza. When Saraya prison was bombed by Israel, my son made his way out along with others and came home. He then went to his grandfather's house in Khan Younis. There, Arafat Abu'l Rish

[75] Statement documented by the Commission and registered as No. q-gahyn-18/2010.
[76] Statement documented by the Commission and registered as No. q-gahyn-20/2010.
[77] Statement documented by the Commission and registered as No. q-gahyn-22/2010.

appeared with a group of masked men, took him from his grandfather's house and beat him in the street...They took him to a vacant plot and killed him there, in full view of everyone ...".[78]

428. Another complainant heard by the Commission stated: "... My husband, aged 40, was arrested on 25 July 2008, accused of belonging to Fatah. While under arrest, he was tortured. He told me that the methods they tortured him with included loss of blood and cuffing in the *shabah* position. For three months there was no information about him until, during the war against Gaza, the detainees were freed and my husband was among them. He had been held at Saraya prison in Gaza City but had not been convicted of anything ... My husband was accused in connection with explosions in Gaza. They took him from Saraya and murdered him in an area known as Nafaq, with two shots to the head, one from each side. I saw my husband when we were contacted by people from the hospital and were told we had to come and take Hamza. We found him in the mortuary. To this day, I do not know who murdered my husband and I have heard nothing. The day he got out of Saraya prison, he came home but was shot in the legs by the Internal Security Service. He arrived at the house bleeding. I brought a doctor to the house for him and he treated him. There was no damage to the bone. He had been receiving treatment for 20 days or more when, one night, masked men came to the house, terrifying the household. We hid him from them then, but another time masked men came to the house and took him away. I do not know who they were or where they took him. Their faces were covered and they wore civilian clothes. They were armed with pistols. They took my husband at around midnight ... He was shot at 4 a.m. The masked men came in a military vehicle. I believe that the Internal Security Service killed my husband. My husband was an ordinary citizen but he belonged to Fatah ...".[79]

429. Another complainant said, "At 1 a.m. on Thursday, 29 January 2009, there was a knock at the door. My husband and the children and I were asleep. My husband, may God have mercy on him, got up and opened the door to find a group of armed and masked men. There were about 15 of them, possibly more. He tried to shut the door to prevent them from coming in. Before that, however, he asked them who they were and they said that they were the security services. We were trying to stop them ... but after that he stopped resisting and opened the door. All of them came into the house ... and took my husband away with them but we did not know where to. In the morning, I went to the police station and reported the incident ... At around noon on 2 February 2009, my husband's cousin came to tell me that my husband had been found at Kamal Adwan Hospital ... with torture marks visible on his body and a bullet hole in his head ...".[80]

430. The Commission's review of the list of persons killed in the first quarter of 2009 in the Gaza Strip[81] shows that some 17 persons found guilty, accused or detained by the security services in the Gaza Strip had been killed.

3. Targeted killing by the de facto authority in the Gaza Strip of persons sympathetic to the political opposition

431. One of the statements heard by the Commission contained the following: "... On Tuesday, 27 March 2009, a group of heavily armed masked men arrived at my house in three military jeeps and knocked at the door. My wife went to

[78] Statement documented by the Commission and registered as No. q-gahyn-19/2010.
[79] Statement documented by the Commission and registered as No. q-gahyn-14/2010.
[80] Statement documented by the Commission and registered as No. q-gahyn-13/2010.
[81] The Commission obtained this list from Al-Haq organization.

the door before me and asked them who they were. They told her they wanted Usama. I went out to ask them who they were and they told me they were from the Internal Security Service. I asked them for a warrant from the Public Prosecutor before I would hand over my son to them. They refused, saying that they were Internal Security and produced identification cards. I told them that Usama would not come out even if they brought down the house on us. I was eventually able to send a message to my cousin, who is a Hamas official. My cousin arrived and asked me what was going on. I asked him, in his capacity as a local official, to take Usama under his protection. He said that there was nothing against him. Afterwards, Usama came out and they put him into one of the jeeps. We learned the next day that they had taken him to Bilal ibn Rabah Mosque in the Zeitoun district. Bound hand and foot, he was guarded by one unarmed man. He asked the guard to undo his shackles so that he could go to the toilet, whereupon he pushed the guard and fled but was pursued by two other guards who demanded he give himself up. They fired three shots, the third one hitting him in the shoulder but, although bleeding, he carried on running until he reached a shop door. At that point, the police arrived and took Usama to Al-Shifa Hospital. When he arrived at the hospital, a doctor who knew him took him to the operating theatre to perform surgery. The doctors reassured Usama's relatives and transferred him to the intensive care ward. However, Internal Security men came in, entering through the radiology department and using the doctors' elevator. They took him on the bed from the intensive care ward to the lift. According to the medical report in my possession, they suffocated him: the report states that the cause of death was asphyxiation. Having suffocated him, they left him in the lift and asked one of the hospital staff to confirm whether or not he was dead ... The reason for my son's death was that he was a prominent member of Fatah. In 2006, he was kidnapped for three days ... I might add that, at 11 p.m., someone came and told me, 'We regret Usama's death but ask you not to appear in front of the media and we will consider him a martyr.' That person is well known. His name is Ahmed Atallah and he is in charge of the military judiciary. I refused, so they sent five or so armed and masked men in a car to warn me not to appear on television ... After my appearance on the satellite channels, the Hamas spokesman, Ihab al-Ghussein, made a statement saying that my son had been killed as a result of a family feud and that there would be an investigation. Subsequently, Taher al-Nunu came on and said that Usama's murder was due to a family feud and that there would be an investigation".[82]

C. Extralegal execution in the Gaza Strip in the light of international human rights law

1. Commitments deriving from instruments aimed at countering extralegal execution

432. Economic and Social Council resolution 1984/50 on safeguards guaranteeing protection of the rights of those facing the death penalty, adopted on 25 May 1984, affirms the need for States to observe all the legal safeguards in respect of the death penalty and the conditions of its implementation. Paragraphs 4 to 9 of the annex to that resolution provide as follows:

> 4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

[82] Statement documented by the Commission and registered as No. q-ghayn-23/2010.

5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.

8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

433. As is evident, those provisions and principles establish a set of safeguards — safeguards which must be granted to the accused to enable him to defend himself and counter any violation of or arbitrary action against his rights.

434. Moreover, the tenets and provisions of international law categorically and unequivocally prohibit any authority, whether a civil authority in an independent region and State or a military authority in an occupied territory, from carrying out physical elimination, premeditated killing and the arbitrary and extralegal execution of individuals, regardless of the reasons and motives for doing so, and regardless of whether the authorities seek to inflict punishment for specific actions and practices or the intent is to take revenge, retaliate or deter and terrorize the population.

435. The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, annexed to Economic and Social Council resolution 1989/65 of 24 May 1989, state that Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions.

436. Paragraph 2 of the Principles states that, in order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.

437. The Principles set forth other provisions, including:

- Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

- Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a

regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

- Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall cooperate fully in international investigations on the subject.

- There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries ... [The investigation] shall include an adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

- The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summons to witnesses, including the officials allegedly involved, and to demand the production of evidence.

- ... Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

- Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

- Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

- ... an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

- The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

438. The Commission affirms that it bases its case on the sum of its findings on extralegal executions, the substance of the hearings and the safeguards to protect persons against such practices and crimes established by international principles and standards.

2. Failure of the de facto authority in the Gaza Strip to prosecute and hold accountable the perpetrators of crimes of extralegal killing

439. The connivance of the authorities may, perhaps, be confirmed by the statement one woman made to the Commission: "... On 14 January 2009, during the war ... I opened the door to find masked men, one of whom entered the house ... They told me that they wanted Zahir. My husband's sister called to him to come to the masked men and I came down with my husband. They took my husband outside and, after a minute, I went into the street. I saw the masked men running away with my husband and I ran after them, screaming. The masked men went into the Bayyarat area and I returned home and then submitted a report to the police. The next day, we received the news that he had been found dead, his hands and neck bound, and was in the Kamal Adwan Hospital. The family went to fetch him from the hospital. I accuse Hamas of killing my husband. Two days after the incident, Hamas released a statement announcing that his death was the result of the war and that they considered him a martyr. We received threats by mobile telephone and were told not to speak about the incident. I know that it was Hamas men who killed my husband. Hamas held them in custody for two weeks. They made us give an undertaking not to interfere and that Hamas would hold them to account."

440. The lack of real accountability for the perpetrators of these violations in the Gaza Strip and the failure of the de facto authority to assume responsibility for protecting persons from such violations has led to the widespread incidence of extralegal executions. Those who carry out such practices know that they are immune and protected by the authorities from accountability or prosecution.

441. Accordingly, the Commission is of the view that the de facto authority in the Gaza Strip must undertake to implement a policy of non-impunity and affirm that no person, commander, official or individual is immune from prosecution and accountability for crimes and violations committed against rights and freedoms.

442. The seizure of power in the Gaza Strip by the members of Hamas does not exempt them or members of affiliated armed organizations and groups from the duty of respect for the rights and freedoms of individuals, specifically, respect for the right to life and the impermissibility of punishing any person without a fair trial. They must also avoid infringements against the dignity and humanity of individuals and subjecting them to torture or other forms of degrading or inhuman treatment.

XI. Conclusions

443. After reviewing the status of human rights and freedoms in the Palestinian territories, hearing the accounts of Palestinian human rights organizations that document violations and monitor the human rights situation in the West Bank and the Gaza Strip, and completing the investigation of all parties connected with the violations which the United Nations Fact-Finding Mission alleges were committed, the Commission came to the following conclusions.

444. Most of the arrests in the Palestinian territories of the West Bank and the Gaza Strip are related to the Palestinian political situation. In the view of the Commission, arbitrary arrests are the result of the political split and the existence of two authorities, in the West Bank and Gaza, inasmuch as most of the arrests made in the West Bank target persons belonging to or associated with Hamas, its supporters and others protected by political forces or groups allied with or sympathetic to Hamas, while the arrests made in the Gaza Strip target persons belonging to or associated with Fatah, its supporters and others protected by political forces or groups allied with or sympathetic to Fatah.

445. Law enforcement officials in the security services in the West Bank and the security services belonging to the de facto authority in the Gaza Strip do not, in most arrest and detention cases, comply with the rules on legal procedure; furthermore, detainees are subjected to ill-treatment and cruelty.

446. Law enforcement officials in the security services in the West Bank and the security services belonging to the de facto authority in the Gaza Strip do not fulfil the legal requirement whereby detainees must be transferred to the Public Prosecutor within the statutory time limits, as prescribed by the Palestinian Code of Criminal Procedure.

447. Civilian detainees are brought before the military judiciary in both the West Bank and the Gaza Strip.

448. In many cases the security services in the West Bank ignore and fail to execute civil court release orders or execute those orders fraudulently.

449. Detainees are subjected to torture and other forms of humiliating and degrading treatment, as a means of extracting confessions from them regarding acts ascribed to them or to others, both by the security services in the West Bank and by the security services of the de facto authority in the Gaza Strip.

450. Cases of direct killing and extrajudicial execution by law enforcement agencies, or by armed groups connected to the de facto authority in the Gaza Strip, targeting persons accused of committing certain acts or sentenced by the military and civil courts have been noted, as have cases of civilians being detained and then eliminated, after interrogation, by the agencies of the de facto authority in the Gaza Strip.

451. Failure by the de facto authority in the Gaza Strip to prosecute and hold to account those who perpetrate crimes of extrajudicial execution and the absence of real accountability for whose who commit such violations have been noted, as has the shirking by that authority of its responsibility to protect individuals against such violations. This has led to the widespread occurrence of extrajudicial executions by individuals, who are reassured by the knowledge that they are immune and will be shielded by the authority from accountability or prosecution.

452. Various violations by official bodies, specifically, the Ministry of the Interior and the security services in the West Bank, have been noted in respect

of the right to form associations, including the appointment of transitional committees comprising persons who are not members of those associations to run them in the place of elected association members. Cases of the Palestinian security services prohibiting associations from carrying out their work and threatening to arrest members of their boards of directors should they defy such prohibitions have also been noted, as well as other violations of the law;

453. A number of violations by official agencies, specifically, the General Personnel Council and the departments and directorates of various Palestinian ministries, of the right to hold a public position in the West Bank has been noted. The most serious of such violations is the cancellation of the appointment or the dismissal, by the Palestinian authorities in the West Bank, of hundreds of persons employed in education and other public positions, on the basis of the political affiliation of the dismissed person, and the refusal of the security services to recommend their appointment. The security services of the de facto authority in the Gaza Strip play a similar role when they carry out what are known as security clearance procedures, and determine appointments on the basis of a person's political affiliation;

454. A series of violations of press freedoms in the Palestinian territories, both the West Bank and the Gaza Strip, were noted. The most egregious of these included the arrest, detention and interrogation of journalists by the security services on the basis of their journalistic work, in relation either to their political affiliation or to their publication of written, audio or visual material; the subjection of some of them to torture and degrading and humiliating treatment during their detention or arrest by the security services; and the prevention and hindrance by the security services of the practice of journalism either because of the political affiliation of the journalists or in order to prevent the journalists from publicizing or researching subjects which the security services did not wish to be investigated.

XII. Recommendations

455. In view of the foregoing, and following the completion by the Commission of its work pursuant to the legal mandate defined in General Assembly resolution 64/10, the Commission submits the following set of recommendations.

456. The Office of the Military Prosecutor and the military judiciary should be instructed to: refrain from taking decisions on the arrest and detention of civilians; discontinue the interference of the military courts in the affairs of the civil courts; and hand over all persons arrested and detained by the military judiciary to the competent civil courts.

457. The protocol of cooperation and understanding between the Office of the Public Prosecutor and the Office of the Military Prosecutor, concluded between the two parties on 28 June 2006, should be rescinded. Under that protocol, the Office of the Public Prosecutor granted permission to the Office of the Military Prosecutor to exercise the competence and powers conferred on the Public Prosecutor by law with regard to the institution and conduct of public proceedings in respect of the offences provided for in the Penal Codes of the West Bank and the Gaza Strip.

458. The security services of the Palestinian National Authority must respect legal requirements when exercising the powers to apprehend, detain and arrest and must not effect any arrest or detention without having obtained a prior judicial order. They must also observe the time limits relating to custody specified in the Code of Criminal Procedure; refrain from holding detainees or prisoners anywhere other than in the places designated for that purpose; and respect the sanctity of homes and private places, which they must not enter or search without a prior court order. The competent Palestinian authorities must also prohibit the exercise by the Military Intelligence Service of the power to detain and arrest with regard to non-military persons.

459. The Palestinian Office of the Public Prosecutor must make use of its powers to inspect prisons and places of detention under its jurisdiction in order to ensure that no unlawfully arrested person or inmate is held there, and must intervene to prevent detentions or arrests from being effected other than in prisons. The Office of the Public Prosecutor must also take action to prevent security service individuals, especially in the Military Intelligence Service, who do not have judicial police authority from arrogating to themselves the powers of those who do possess that authority under the law:

460. All law enforcement officials must respect and execute civil court orders relating to the release of detainees. The Commission has confirmed that some security services, including the Preventive Security Service, the General Intelligence Service and the Military Intelligence Service, refuse to execute civil court orders for the release on bail of detainees or persons held in custody. Such persons continue to be detained regardless of the civil court order for their release.

461. The arrest and detention of civilians by the Office of the Military Prosecutor and the military judiciary must cease, inasmuch as they constitute a clear and outright arrogation of the authority of the civil judiciary, in addition to depriving civilians of the right to appear before the appropriate court, as affirmed and guaranteed by national laws and international human rights instruments. Furthermore, the Commission is of the opinion that the arrogation by the Office of the Military Prosecutor and the military judiciary of the power to arrest and detain civilians has set a precedent for the exercise by all military

security services of judicial police functions with respect to civilians, thus curtailing the rights and freedoms guaranteed by the Basic Law and the Palestinian Code of Criminal Procedure.

462. The Office of the Military Prosecutor and the military judiciary must cease the practice of trying cases that fall within the jurisdiction of the civil courts and relate to persons whose disputes and offences those courts are competent to try. That practice constitutes a clear attack on individuals' rights and freedoms, particularly in view of the fact that the Palestinian civil judiciary, through its highest judicial authority, namely, the Supreme Court, has affirmed in dozens of court decisions that the trial and arrest of Palestinian civilians by the Office of the Military Prosecutor and the military judiciary are unlawful and cannot be permitted.

463. All persons detained and arrested by the Palestinian National Authority and the de facto authority in the Gaza Strip who have not been brought before the competent civil courts must be released.

464. All forms of torture, physical abuse and ill-treatment in the course of interrogations and investigations must be banned. The Commission has established that the security services have gone to extremes in their use of all forms of torture and degrading treatment during the various stages of detention for the purpose of extracting information and inducing detainees to confess to acts or statements ascribed to them or to others.

465. The official authorities in the West Bank must discharge their responsibility to hold accountable and prosecute those who violate the law, whether by acts of arbitrary detention, by crimes of torture or other forms of cruel or degrading treatment or by violations of other rights and freedoms. Indeed, the Commission is convinced that the absence of effective and genuine accountability for those who have committed the crime of torture and the members of the security services who have broken the rules and regulations governing arrest and detention has helped to increase the frequency of such violations and been conducive to their occurrence.

466. The Palestinian National Authority must investigate all crimes of extrajudicial killing and execution that have taken place in the Gaza Strip, in order to ensure the accountability of those who ordered the crimes to be committed, those who instigated their perpetration and those who committed them. The perpetrators of the crimes must not escape punishment and must be held to account.

467. The de facto authority in the Gaza Strip must take the requisite legal steps to end raid, search and arrest operations by masked persons acting in violation of the law. It also has the obligation to bring to an end operations involving the arrest and detention of persons in places other than those designated by law.

468. The security services of the de facto authority in the Gaza Strip must abide by the provisions of the Palestinian Code of Criminal Procedure which state that no arrest may be effected without a prior court order; that the sanctity of homes and private places must be respected and may not be entered without a prior court order; and that the permitted custodial time limits must be respected.

469. The de facto authority in the Gaza Strip must ban all forms of torture, physical abuse and ill-treatment in the course of interrogations and investigations. The Commission has established that the security services belonging to the de facto authority have gone to extremes in their use of all forms of torture and degrading treatment during the various stages of detention.

470. The de facto authority in the Gaza Strip must discharge its responsibilities under national law and international humanitarian law by prosecuting and holding to account those who violate the law, whether by extrajudicial execution, by acts of arbitrary detention or by crimes of torture or other forms of cruel or degrading treatment.

471. The de facto authority in the Gaza Strip must cease to refer civilians to military courts, for such referral constitutes a violation of the rights of the accused person, who must be tried before the appropriate court.

472. It is incumbent on the Palestinian National Authority and the de facto authority in the Gaza Strip to redress the situation of all public employees who have been dismissed from their posts by returning them to those posts in the West Bank and the Gaza Strip, and compensating them for the damage sustained, given that most cases of dismissal were based on political affiliation rather than professional grounds or grounds of competency.

473. The condition imposed by Government agencies in the West Bank and the Gaza Strip that an employee must obtain the approval of the security services as one of the requirements for appointment to an official post must be abolished, inasmuch as such approval is unlawful and constitutes a clear violation by Government agencies of the Palestinian Basic Law and the Civil Service Law.

474. The security services in the West Bank and the Gaza Strip must cease to arrest, interrogate and prosecute journalists by reason of the work they perform and must not hamper journalists in their work, inasmuch as such acts constitute a clear and explicit violation of the right to freedom of opinion and expression and freedom of the press, which are guaranteed under both national and international law.

475. Interference by the Ministry of the Interior of the Palestinian National Authority in the work of community associations by appointing transitional committees comprising persons who are not members of those associations to run associations in the place of elected associations members must cease, inasmuch as that practice is in violation of the law.

476. The Ministry of the Interior of the Palestinian National Authority must respect and execute Palestinian Supreme Court decisions that reverse official decisions in connection with the appointment of transitional committees to run associations.

477. The security services of the Palestinian National Authority must respect the work of community-based associations and cease to interfere in their affairs; moreover, they must not close them, search them or seize their assets without valid legal grounds.

478. The Palestinian National Authority and the de facto authority in the Gaza Strip must ensure that all victims of violations of human rights and freedoms receive compensation and justice proportionate to the degree and gravity of those violations.

479. With respect to torture and other forms of degrading treatment, the competent Palestinian authorities must remedy the shortcomings and deficiencies of penal legislation in the Palestinian territory by adopting clear legislative texts that criminalize and punish such practices in a manner that is in keeping with their gravity. The Commission deems it necessary for such laws to be consistent with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force in 1987, because that Convention is a peremptory legal reference that must be respected and applied by all who are subject to international law.

480. The Palestinian National Authority should form a Palestinian committee of judicial authorities, civil society organizations and official bodies to follow up the implementation of the present recommendations.

481. Palestinian combatants, in their armed struggle to obtain their legitimate right of self-determination, must respect the rules governing the behaviour of combatants during fighting established in the principles and provisions of international humanitarian law and public international law and comply fully with the guarantees and principles pertaining to the protection of civilians in international armed conflicts laid down in those rules.

482. The United Nations must discharge its legal responsibility to ensure that the right of the Palestinian people to self-determination, freedom and liberation from Israeli occupation and hegemony is implemented, because the continuation of the Israeli occupation of Palestinian territory has resulted not only in the denial of the collective rights of the Palestinian people, but also in the abandonment and disappearance of the human rights and freedoms of Palestinians, who are subjected at every turn to the erosion of their dignity and humanity by the acts and practices of the occupier, including murder, disappearance, banishment, confiscation of property, prevention of movement and travel, and the oppressive siege of the Gaza Strip.

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Annex 1

General Assembly resolution 64/10

64/10. Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the relevant rules and principles of international law, including international humanitarian and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,[1] which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Universal Declaration of Human Rights[2] and the other human rights covenants, including the International Covenant on Civil and Political Rights,[3] the International Covenant on Economic, Social and Cultural Rights[3] and the Convention on the Rights of the Child,[4]

Recalling further its relevant resolutions, including resolution ES-10/18 of 16 January 2009 of its tenth emergency special session,

Recalling the relevant Security Council resolutions, including resolution 1860 (2009) of 8 January 2009,

Recalling also the relevant resolutions of the Human Rights Council, including resolution S-12/1 of 16 October 2009,

Expressing its appreciation to the United Nations Fact-Finding Mission on the Gaza Conflict, led by Justice Richard Goldstone, for its comprehensive report,[5]

Affirming the obligation of all parties to respect international humanitarian law and international human rights law,

Emphasizing the importance of the safety and well-being of all civilians, and reaffirming the obligation to ensure the protection of civilians in armed conflict,

Gravely concerned by reports regarding serious human rights violations and grave breaches of international humanitarian law committed during the Israeli military operations in the Gaza Strip that were launched on 27 December 2008, including the findings of the Fact-Finding Mission and of the Board of Inquiry convened by the Secretary-General,[6]

Condemning all targeting of civilians and civilian infrastructure and institutions, including United Nations facilities,

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1 United Nations, *Treaty Series*, vol. 75, No. 973.

2 Resolution 217 A (III).

3 See resolution 2200 A (XXI), annex.

4 United Nations, *Treaty Series*, vol. 1577, No. 27531.

5 A/HRC/12/48.

6 A/63/855-S/2009/250.

Stressing the need to ensure accountability for all violations of international humanitarian law and international human rights law in order to prevent impunity, ensure justice, deter further violations and promote peace,

Convinced that achieving a just, lasting and comprehensive settlement of the question of Palestine, the core of the Arab-Israeli conflict, is imperative for the attainment of a comprehensive, just and lasting peace and stability in the Middle East,

1. *Endorses* the report of the Human Rights Council on its twelfth special session, held on 15 and 16 October 2009;[7]

2. *Requests* the Secretary-General to transmit the report of the United Nations Fact-Finding Mission on the Gaza Conflict[5] to the Security Council;

3. *Calls upon* the Government of Israel to take all appropriate steps, within a period of three months, to undertake investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice;

4. *Urges*, in line with the recommendation of the Fact-Finding Mission, the undertaking by the Palestinian side, within a period of three months, of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice;

5. *Recommends* that the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War,[1] undertake as soon as possible the steps necessary to reconvene a Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with article 1;

6. *Requests* the Secretary-General to report to the General Assembly, within a period of three months, on the implementation of the present resolution, with a view to the consideration of further action, if necessary, by the relevant United Nations organs and bodies, including the Security Council;

7. *Decides* to remain seized of the matter.

39th plenary meeting
5 November 2009

[7] A/64/53/Add.1.

Annex 2

Decree of the President of the Palestinian National Authority establishing the Commission

Decree No. ( ) 2010

Concerning the formation of an independent commission to follow up the Goldstone report

The President of the State of Palestine,

Chairman of the Palestine Liberation Organization Executive Committee,

President of the Palestinian National Authority,

On the basis of the provisions of the Amended Basic Law of 2003 and its amendments,

Having considered the Decision of the Prime Minister dated 14 January 2010,

Having considered also the Goldstone report,

By virtue of the powers with which he is invested, and in the interests of the public, has decided as follows:

Article 1

To form an independent commission to follow up implementation of the recommendations made in the Goldstone report with respect to the Palestinian National Authority, composed of the following:

1. Issa Abu Sharar, Chairman
2. Zuhair al-Surani, member
3. Ghassan Farmand, member
4. Yasser al-Amuri, member
5. Nasser Rayyes, member

Article 2

1. To authorize that Commission to undertake the investigative duties and responsibilities required of it pursuant to the Goldstone report, and to work in accordance with the timetable provided for in that report.

2. The Commission shall submit its recommendations and the outcome of its work to the relevant authorities.

Article 3

The Commission shall appoint the experts and specialists it considers most appropriate to assist it in performing its duties.

Article 4

All relevant official and unofficial parties shall cooperate with the Commission and provide it with all the facilities and information necessary for it to perform its duties.

Article 5

All the relevant parties shall implement the provisions of this Decree with effect from its publication. The Decree shall be published in the Official Gazette.

Ramallah, 25 January 2010

(*Signed*) Mahmoud **Abbas**
President of the State of Palestine
Chairman of the Palestine Liberation Organization Executive Committee
President of the Palestinian National Authority

Annex 3

Statute of the Palestinian Independent Investigation Commission

Statute of the Palestinian Independent Investigation Commission established pursuant to the Goldstone report

Pursuant to the decree of the President of Palestine issued on 25 January 2010 on the establishment of an independent investigation commission of inquiry in follow-up to the Goldstone report, and having considered United Nations General Assembly resolution 64/254; and the report of the Fact-Finding Mission headed by Justice Richard Goldstone that was established by the Human Rights Council with a view to investigating the facts in connection with the recent conflict in Gaza; and the international standards and principles governing the rules and procedures used for investigations into violations of international human rights law and international humanitarian law,

The Commission adopts the following Statute:

Part I

Headquarters and mandate of the Commission

Headquarters of the Commission

Article 1

1. The headquarters of the Commission shall be in the city of Ramallah.

2. Unless otherwise decided, the Commission shall hold its meetings at its headquarters.

3. The Commission shall perform its functions and exercise its authority in the manner set forth in the present Statute, both within and beyond the Palestinian territories, as required.

Language of the Commission

Article 2

Arabic shall be the official language of the Commission and its working groups.

Mandate of the Commission

Article 3

1. The Commission shall be an independent legal person and shall enjoy the legal competence necessary for the performance of its functions and the fulfilment of its objectives.

2. The Commission shall perform its mandate to investigate the Palestinian contraventions and violations referred to in the report of the Fact-Finding Mission that was established by the Human Rights Council and headed by Justice Richard Goldstone.

Competence of the Commission *ratione loci* and *ratione materiae*

Article 4

The Commission shall perform its mandate and exercise its authority as specified in its Statute throughout the Occupied Palestinian Territory.

Limits of the competence of the Commission

Article 5

The Commission shall have no competence or jurisdiction beyond the Palestinian contraventions and violations referred to in the report of the Fact-Finding Mission that was established by the Human Rights Council.

Article 6

In the course of its duties, the Commission shall:

1. Investigate the violations attributed to Palestinians in the report of the Fact-Finding Mission;

2. Collect information, evidence and data related to its functions;

3. Record allegations or complaints of violations of human rights in the areas within its mandate;

4. Hold hearings;

5. Issue orders to obtain from official agencies such documents, papers, administrative orders, medical records and other sources of information as it shall deem necessary;

6. Summon persons and witnesses;

7. Make field visits to Government sites, detention centres and reform and rehabilitation centres;

8. Receive evidence and statements from witnesses and organizations located outside the Occupied Palestinian Territory;

9. Request any person or entity to submit to it any material in the possession of, held by or under the control of such person or entity, or anything else that the Commission regards as being relevant to the subject of the investigation or the hearing;

10. Take possession of any material or item connected with the investigation.

Legal framework governing the work of the Commission

Article 7

In the performance of its work and functions, the Commission shall be governed by the provisions of international human rights law, international humanitarian law, the firmly established and definitive principles of international law, the obligations of Palestine arising from its membership of the United Nations, the unilateral obligations of Palestine to respect and apply the four Geneva Conventions of 1949 and the body of domestic legislation in force in the Occupied Palestinian Territory.

Part II

Legal personality of the Commission and the conditions of its independence

Acquisition and loss of the legal personality of the Commission

Article 8

The existence of the Commission as a legal person shall commence with the issuance of the Presidential decree on its establishment and shall terminate upon completion of the purpose for which it was established or upon its dissolution by the entity that established it.

Independence of the members of the Commission

Article 9

1. The members of the Commission shall be independent in the performance of their work and shall be subject to no authority other than the law.

2. In the performance of their work, the members of the Commission shall not accept any instructions, guidance or interference from any authority, entity or person.

Oath of office

Article 10

1. Before assuming his functions, every member of the Commission shall take the following oath: "I swear by Almighty God that I shall perform my work as a member of this Commission with complete independence, integrity and impartiality and that I shall respect the law and the Statute of the Commission".

2. The Chairman of the Commission shall take the oath before the other members of the Commission present, and the members of the Commission shall take the oath before the Chairman of the Commission.

Commitments by members

Article 11

Members of the Commission undertake to be ready at all times to respond to a call from the Chairman to attend a meeting. They undertake to attend all investigation meetings and hearings, in order to ensure the proper conduct of the work of the Commission, unless excused from attending by an unforeseen eventuality that is justified under the rules and principles.

Duties of Commission members

Article 12

No member of the Commission shall be permitted, while a member of the Commission, to engage in any work or activity that is incompatible with his duties in the Commission. Members of the Commission shall also be prohibited from making any announcement or statement or from participating in any activity or work likely to cast doubt on his independence, impartiality or integrity.

Resignation

Article 13

1. The notice of resignation of a member of the Commission shall be submitted to the Chairman.

2. The Chairman shall inform the members immediately of any notice of resignation he receives.

3. The notice of resignation of the Chairman shall be submitted to the Commission Rapporteur.

4. The resignation of the Chairman or of a member of the Commission shall take effect from the date on which it is accepted by the members of the Commission, and the member who has resigned shall be immediately informed of that date.

Minimum number of members of the Commission

Article 14

1. If a member of the Commission resigns, the Commission shall continue its work with the remaining members.

2. If the Chairman of the Commission resigns, the Commission shall meet in order to elect from among its members a new Chairman to replace him.

3. The minimum number of members of the Commission shall be three.

4. If the number of members of the Commission falls below the required minimum, the Commission shall cease to carry out its work until such time as the required number is restored.

5. The Commission shall transmit to the President of the Authority the names of the persons proposed for membership of the Commission.

Competence of the Chairman of the Commission

Article 15

1. The Chairman shall represent the Commission at the local and international levels.

2. He shall supervise the work of the Commission and its subsidiary bodies.

3. He shall supervise the smooth running of the administrative work of the Commission.

4. He shall chair the meetings of the Commission and guide its discussions.

5. He shall ensure that the provisions of the present Statute are applied.

6. He shall call to order and adjourn all the meetings of the Commission.

7. During discussion of any agenda item, the Chairman may propose to the Commission the establishment of a time limit for each speaker as well as a limit on the number of times a member may speak during discussion of a particular issue. He may also close the list of speakers.

8. The Chairman may propose the postponement or closure of discussions as well as the adjournment or postponement of meetings.

Rapporteur of the Commission

Article 16

1. The Commission shall elect a rapporteur from among its members.

2. If the Chairman ceases to be a member of the Commission or resigns as Chairman, the Rapporteur shall assume the chairmanship pending the election of a new chairman.

3. The election referred to shall be by secret ballot and the candidate who receives the greatest number of member votes shall be elected.

Part III

Investigation meetings and hearings

Quorum

Article 17

Meetings of the Commission shall be valid if a simple majority of its members is present.

Procedures and guidelines for meetings

Article 18

The Commission may adopt any directives, guidelines or procedures, either general or specific, with respect to investigation meetings.

Orderly conduct of meetings

Article 19

1. No person may speak at a hearing unless that person has asked for the floor and has received the consent of the Chairman.

2. The Chairman may not prohibit a person from taking the floor other than for a reason required by the present Statute; in the event of disagreement on that matter, the Chairman shall seek the opinion of the members of the Commission who are present and shall make his decision without discussion on the basis of a relative majority.

3. If a speaker uses inappropriate language or mentions a matter that is improper or incompatible with the Statute, the Chairman shall draw the speaker's attention thereto and remind him of his duty to observe the Statute and, when necessary, may prevent him from continuing to speak.

Attendance at meetings

Article 20

1. Hearings shall be closed meetings, attendance at which shall be restricted to members of the Commission and persons who are being heard.

2. Apart from members of the Commission, the meetings may be attended only by members of the secretariat, interpreters and persons assisting the Commission, unless the Commission decides otherwise.

Impartiality and independence of members

Article 21

If one of the members of the Commission considers, for personal reasons, that he should withdraw from participation in the investigation, he shall immediately inform the Chairman of the Commission, who shall be permitted to appoint another member to replace him.

Invitation to victims and witnesses

Article 22

1. With a view to hearing their statements, the Commission shall invite victims of human rights violations referred to in the report of the Fact-Finding Mission to meet it, and shall request them to provide proof and evidence in support of their statements.

2. The Commission may investigate any evidence or data that it regards as having a bearing on the matter and, where possible, shall carry out its investigation at the scene of the events.

3. The Commission shall decide whether the evidence and data submitted by the parties are acceptable and reliable.

4. It shall establish the conditions and procedures for the hearing of witnesses.

5. It shall hold its investigative meetings with at least two members of the Commission in attendance.

6. The Commission may send one or more of its members to the scene of the events to carry out on-site inspections.

7. The Palestinian authorities shall ensure that the members of the Commission and the persons accompanying them have the privileges and immunities necessary for the exercise of their functions.

Immunity

Article 23

Immunity and the special procedural rules related to the official status of a person, whether under national or international law, shall not prevent the Commission from exercising its competence with respect to that person.

Hearings of persons

Article 24

The Commission may hear the statements of any person if it considers that the person has something to say that is important and necessary for the performance of its functions.

Invitation and summons

Article 25

The Commission shall invite persons whose testimony it wishes to hear or summon them to attend by means of notifications signed by the Chairman of the Commission; such notifications shall specify the time and place for the attendance of the person to whom the notification has been sent.

Refusal to attend

Article 26

If a person who is requested to attend refuses to do so or to comply with the notification of the Commission, the Chairman shall be entitled to call on the competent bodies to undertake the necessary legal procedures to induce the person to respect the Commission's request.

Oath to be taken by witnesses and experts

Article 27

The Commission shall ask witnesses and experts to take an oath to be decided by the Commission.

Verbal complaints

Article 28

If a person is unable, on account of disability or inability to read or write, to submit a complaint or request to the Commission, that person may present a solicitation, request, complaint, comment or testimony by audio-visual or other electronic means.

Investigation records

Article 29

A record shall be made of statements made by any person being heard and shall be signed by the registrar of the hearing, the members of the Commission attending the hearing and the person being heard. The date, time and place of the hearing shall be indicated in the record as well as the names of all those present during the hearing. The record shall also indicate any failure by a person to sign and the reasons for such failure.

Sound and video recording

Article 30

1. Any person appearing before the Commission shall be informed, in a language that he understands and speaks well, that a sound or video recording will be made of the hearing and that he has the right to object to such recording if he so wishes.

2. If a person appearing before the Commission objects to the making of a sound or video recording, what is said shall be recorded in written form.

3. If the hearing is interrupted, the incidence and time of the interruption shall be recorded before the end of the sound or video recording, as well as the time when the hearing is resumed.

4. At the conclusion of a hearing, the person appearing before the Commission shall be given the opportunity, prior to the closure of the record of the hearing, to clarify anything that he has said.

5. When the sound or video recording of a hearing has been completed, the seal of the Commission shall be affixed to the original recording tape in the presence of the person who has been heard and signed by the members of the Commission present and that person.

Documents of the inquiry

Article 31

All the documents relating to any investigation shall be entrusted to the Rapporteur of the Commission and shall be inventoried and kept under his responsibility until the investigation is concluded.

Assistance of experts

Article 32

1. The Commission may decide to seek the assistance of experts or advisers as it may deem appropriate.

2. Persons whose assistance is sought by the Commission shall be subject to the instructions and directives of the Chairman.

Confidentiality of the information and documents of the Commission

Article 33

1. No member of the Commission may divulge any item of information, report or document obtained by the Commission in the course of its investigation and hearings.

2. Throughout the period of their assignment and after it has expired, the members of the Commission, those assisting the investigation, experts and other persons assisting the Commission shall be under an obligation to maintain the confidentiality of the evidence and information with which they become acquainted while carrying out their work.

Confidentiality of investigation evidence and documents

Article 34

The Commission shall keep photocopied records at its headquarters of all investigation documents and evidence it has obtained, and only the members of the Commission, during the period of their assignment, shall have the opportunity to study those records.

Establishment of committees

Article 35

The Commission may establish special working groups and committees with limited membership to assist it in the procedures of the hearings and the inquiry, the recording of facts, the gathering of information and documents and other matters arising from the performance of Commission functions.

Decisions of the Commission and quorum for voting purposes

Article 36

1. The Commission shall take its decisions by consensus.

2. Any member who objects or has a reservation with respect to a decision shall be entitled to record the reasons and justifications for his objection or reservation and the reservation shall be kept with the decision.

Part IV

Protection of witnesses and informants and protective measures

Protection of informants and witnesses

Article 37

1. The Commission shall provide the necessary protection and ensure the safety of victims and witnesses that provide information on violations who may face threats or have reason to believe that they may face threats or be interrogated or pursued by known or unknown parties.

2. The word "witness" shall mean anyone who has provided evidence or testimony, or will provide evidence or testimony, or who describes specific events that he witnessed; the protective measures shall be extended to all members of the family of an informant or witness and to members of his household.

3. The term "victim" shall apply to natural persons who suffer as a result of the perpetration of any crime falling within the scope of the competence of the Commission; the term "victim" shall also cover legal persons whose possessions have suffered direct harm or who have been prevented directly or indirectly from exercising their functions.

Protective measures

Article 38

Should the Commission be concerned that any actual or potential witness may be subjected to persecution, harassment or harm it shall:

1. Hear evidence in camera or in any place that the Commission regards as meeting the requirements of confidentiality and protection;

2. Keep the identity of providers of information and witnesses secret;

3. Avoid divulging or using evidence that is likely to reveal the identity of a witness;

4. Take any measures that the Commission considers appropriate in order to protect witnesses.

Relieving informants and witnesses of liability

Article 39

Victims who provide information on violations and witnesses shall be relieved of criminal, civil and administrative liability in respect of the events they have reported or the evidence they have submitted.

Prohibition on the calling of informants or witnesses to testify

Article 40

No party may issue a writ of summons to persons who provide information on violations, or to witnesses, and may not ask them to present testimony or submit information concerning their statements or the content or tenor of the evidence they gave to the Commission.

Part V

Final clauses

Preparation of the report of the Commission

Article 41

1. At the end of the inquiry, the Commission shall draft its report based on the outcome of the investigation it has conducted.

2. The Chairman shall submit the report to the parties concerned, together with all the recommendations that the Commission considers appropriate.

3. The Chairman shall record the date on which the report is sent to the parties concerned.

Implementing regulations

Article 42

The Commission shall issue such implementing regulations as it shall deem necessary in order to ensure the application of the provisions of the present Statute. It shall also issue financial and administrative rules concerning remuneration, allowances and expenses in connection with the performance of Commission functions, means of payment or reimbursement, and travel and subsistence allowances for those attending investigation meetings or to cover the cost of the travel and accommodation of the members of the Commission and the experts and officials accompanying them.

Commission documents

Article 43

1. Immediately after submitting its report, the Commission shall assemble and archive all its documents and records in special boxes which shall be closed and sealed with the seal of the Commission.

2. The boxes shall be kept by the Supreme Court of Palestine for a period of six months from the date of submission of the final report.

3. On the expiry of the said period, the boxes shall be opened and the documents and records of the Commission shall be destroyed in the presence of the Chairman and members of the Commission.

Amendments to the Statute

Article 44

The Commission may amend the present Statute by a decision of a majority of its members.

Annex 4

Resignation of Commission member Mr. Nasser Al-Rayyes and acceptance thereof

Al-Haq
6 February 2010

H.E. Mr. Mahmoud Abbas

Chairman of the Executive Committee of the Palestine Liberation Organization

President of the Palestinian National Authority

Subject: My release from the Commission which you established pursuant to the report of Justice Richard Goldstone

Sir,

I wish to begin by conveying to you my sincere gratitude for the confidence you displayed by personally choosing me as a member of the Independent Investigation Commission thereby conferring on me a juridical and national responsibility that fills me with pride. Unfortunately, however, the requirements of impartiality, objectivity and independence mean that I am unable to act as a member of the Commission, as it is clear to me from a study of the legal conditions set forth in the United Nations model protocol on national commissions of inquiry that national authorities, in establishing a commission of inquiry, have an obligation to ensure no commission member has close links with any member of the Government or Governmental entity, any political party or organization involved in the perpetration of the alleged violations or any organization or group connected with the victims which might impair the credibility of the commission.

I am a legal adviser to a Palestinian organization involved with human rights and freedoms and with monitoring and documenting possible violations of, and offences against, those rights and freedoms. In both my personal capacity and through al-Haq organization, I also have links with and am the legal representative of numerous persons and bodies that have suffered from attacks against their rights and freedoms. Moreover, I was one of those who took part in the meetings of the United Nations Fact-Finding Mission chaired by Justice Richard Goldstone and testified on the situation of human rights and freedoms in the Occupied Palestinian Territory.

On the basis of the foregoing reasons, and in order to safeguard the impartiality and independence of the Commission and leave no room for any criticism, diminution, prejudice or suspicion with respect to its impartiality or independence on the part of any entity, I am hereby submitting my request to be excused from serving on the Commission. Nonetheless, I remain ready, both as an individual and as the representative of an entity, to offer help, information and technical advice as well as any support and assistance that the Commission may need. Both I and the institution are confident that such support for the success of the Commission will enable it to achieve the objective for which it was established and which is a patriotic and juridical responsibility.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Nasser **Al-Rayyes**
Adviser to the organization Al-Haq

Annex 5

Requests to provide the Commission with documented reports of human rights violations falling within the scope of its mandate, sent to the following non-governmental organizations:

- The Independent Commission for Human Rights
- Al-Haq
- The Al-Dameer Association for Human Rights
- The Jerusalem Legal Aid and Human Rights Centre
- The Democracy and Workers' Rights Centre

14 March 2010

Ms. Randa Siniora

Executive Director, Independent Commission for Human Rights

Re: The establishment of an independent commission pursuant to the Goldstone report

Madam,

On 25 January 2010, in response to General Assembly resolution 64/10, and pursuant to the report of the United Nations Fact-Finding Mission on the Gaza Conflict that was headed by Judge Richard Goldstone, the Palestinian President issued a decree concerning the establishment of an independent commission to investigate Palestinian human rights violations cited in that report.

The Commission is chaired by Judge Issa Abu Sharar, and its members include Judge Zuhair al-Surani, Mr. Ghassan Farmand and Mr. Yasser al-Amuri. It is investigating violations of human rights and freedoms that were committed by the Palestinian National Authority in the West Bank and by the de facto authority in the Gaza Strip.

The Commission will carry out its mandate to investigate violations committed by the Palestinian authorities in the West Bank in the following areas:

- Arbitrary arrest and torture, that is to say, unjustified arrest on the basis of an individual's political affiliation;
- Violation of the freedom to form associations, targeting of non-governmental organizations in order to prevent them from carrying out their activities, and failure to comply with court decisions regarding such organizations;
- Violation of freedom of the press;
- Violation of freedom of assembly;
- Discrimination in the public service sector on the basis of political affiliation.

The following violations committed by the Palestinian authorities in the Gaza Strip will also be investigated:

- Killings
- Arbitrary arrest
- Torture and ill-treatment

We at the Commission appreciate the outstanding role you play in defence of human rights and freedoms, and we hope that you will assist the Commission in achieving its goals by providing it with any documentation your organization has obtained of violations which fall within the scope of the Commission's mandate that occurred between 27 December 2008 and the end of March 2009. As part of its work the Commission will conduct a hearing with your institution, the time and location of which will be determined in due course.

Accept, Madam, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

14 March 2010

Mr. Shawan Jabarin

General Director, Al-Haq

Re: The establishment of an independent commission pursuant to the Goldstone report

Sir,

On 25 January 2010, in response to General Assembly resolution 64/10, and pursuant to the report of the United Nations Fact-Finding Mission on the Gaza Conflict that was headed by Judge Richard Goldstone, the Palestinian President issued a decree concerning the establishment of an independent commission to investigate Palestinian human rights violations cited in that report.

The Commission is chaired by Judge Issa Abu Sharar, and its members include Judge Zuhair al-Surani, Mr. Ghassan Farmand and Mr. Yasser al-Amuri. It is investigating violations of human rights and freedoms that were committed by the Palestinian National Authority in the West Bank and by the de facto authority in the Gaza Strip.

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- Violation of the freedom to form associations, targeting of non-governmental organizations in order to prevent them from carrying out their activities, and failure to comply with court decisions regarding such organizations;
- Violation of freedom of the press;
- Violation of freedom of assembly;
- Discrimination in the public service sector on the basis of political affiliation.

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- Torture and ill-treatment

We at the Commission appreciate the outstanding role you play in defence of human rights and freedoms, and we hope that you will assist the Commission in achieving its goals by providing it with any documentation your organization has obtained of violations which fall within the scope of the Commission's mandate that occurred between 27 December 2008 and the end of March 2009. As part of its work the Commission will conduct a hearing with your institution, the time and location of which will be determined in due course.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

14 March 2010

Ms. Sahar Francis

Director, Al-Dameer Association for Human Rights

Re: The establishment of an independent commission pursuant to the Goldstone report

Madam,

On 25 January 2010, in response to General Assembly resolution 64/10, and pursuant to the report of the United Nations Fact-Finding Mission on the Gaza Conflict that was headed by Judge Richard Goldstone, the Palestinian President issued a decree concerning the establishment of an independent commission to investigate Palestinian human rights violations cited in that report.

The Commission is chaired by Judge Issa Abu Sharar, and its members include Judge Zuhair al-Surani, Mr. Ghassan Farmand and Mr. Yasser al-Amuri. It is investigating violations of human rights and freedoms that were committed by the Palestinian National Authority in the West Bank and by the de facto authority in the Gaza Strip.

The Commission will carry out its mandate to investigate violations committed by the Palestinian authorities in the West Bank in the following areas:

- Arbitrary arrest and torture, that is to say, unjustified arrest on the basis of an individual's political affiliation;
- Violation of the freedom to form associations, targeting of non-governmental organizations in order to prevent them from carrying out their activities, and failure to comply with court decisions regarding such organizations;
- Violation of freedom of the press;
- Violation of freedom of assembly;
- Discrimination in the public service sector on the basis of political affiliation.

The following violations committed by the Palestinian authorities in the Gaza Strip will also be investigated:

- Killings
- Arbitrary arrest
- Torture and ill-treatment

We at the Commission appreciate the outstanding role you play in defence of human rights and freedoms, and we hope that you will assist the Commission in achieving its goals by providing it with any documentation your organization has obtained of violations which fall within the scope of the Commission's mandate that occurred between 27 December 2008 and the end of March 2009. As part of its work the Commission will conduct a hearing with your institution, the time and location of which will be determined in due course.

Accept, Madam, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

14 March 2010

Mr. Issam Aruri

General Director, Jerusalem Legal Aid and Human Rights Centre

Re: The establishment of an independent commission pursuant to the Goldstone report

Sir,

On 25 January 2010, in response to General Assembly resolution 64/10, and pursuant to the report of the United Nations Fact-Finding Mission on the Gaza Conflict that was headed by Judge Richard Goldstone, the Palestinian President issued a decree concerning the establishment of an independent commission to investigate Palestinian human rights violations cited in that report.

The Commission is chaired by Judge Issa Abu Sharar, and its members include Judge Zuhair al-Surani, Ghassan Farmand and Mr. Yasser al-Amuri. It is investigating violations of human rights and freedoms that were committed by the Palestinian National Authority in the West Bank and by the de facto authority in the Gaza Strip.

The Commission will carry out its mandate to investigate violations committed by the Palestinian authorities in the West Bank in the following areas:

- Arbitrary arrest and torture, that is to say, unjustified arrest on the basis of an individual's political affiliation;
- Violation of the freedom to form associations, targeting of non-governmental organizations in order to prevent them from carrying out their activities, and failure to comply with court decisions regarding such organizations;
- Violation of freedom of the press;
- Violation of freedom of assembly;
- Discrimination in the public service sector on the basis of political affiliation.

The following violations committed by the Palestinian authorities in the Gaza Strip will also be investigated:

- Killings
- Arbitrary arrest
- Torture and ill-treatment

We at the Commission appreciate the outstanding role you play in defence of human rights and freedoms, and we hope that you will assist the Commission in achieving its goals by providing it with any documentation your organization has obtained of violations which fall within the scope of the Commission's mandate that occurred between 27 December 2008 and the end of March 2009. As part of its work the Commission will conduct a hearing with your institution, the time and location of which will be determined in due course.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

14 March 2010

Mr. Hasan Barghouthi

General Director, Democracy and Workers' Rights Centre

Re: The establishment of an independent commission pursuant to the Goldstone report

Sir,

On 25 January 2010, in response to General Assembly resolution 64/10, and pursuant to the report of the United Nations Fact-Finding Mission on the Gaza Conflict that was headed by Judge Richard Goldstone, the Palestinian President issued a decree concerning the establishment of an independent commission to investigate Palestinian human rights violations cited in that report.

The Commission is chaired by Judge Issa Abu Sharar, and its members include Judge Zuhair al-Surani, Ghassan Farmand and Mr. Yasser al-Amuri. It is investigating violations of human rights and freedoms that were committed by the Palestinian National Authority in the West Bank and by the de facto authority in the Gaza Strip.

The Commission will carry out its mandate to investigate violations committed by the Palestinian authorities in the West Bank in the following areas:

- Arbitrary arrest and torture, that is to say, unjustified arrest on the basis of an individual's political affiliation;
- Violation of the freedom to form associations, targeting of non-governmental organizations in order to prevent them from carrying out their activities, and failure to comply with court decisions regarding such organizations;
- Violation of freedom of the press;
- Violation of freedom of assembly;
- Discrimination in the public service sector on the basis of political affiliation.

The following violations committed by the Palestinian authorities in the Gaza Strip will also be investigated:

- Killings
- Arbitrary arrest
- Torture and ill-treatment

We at the Commission appreciate the outstanding role you play in defence of human rights and freedoms, and we hope that you will assist the Commission in achieving its goals by providing it with any documentation your organization has obtained of violations which fall within the scope of the Commission's mandate that occurred between 27 December 2008 and the end of March 2009. As part of its work the Commission will conduct a hearing with your institution, the time and location of which will be determined in due course.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

Annex 6

Letter to Mr. Omar Qinawi, Deputy Chief of Egyptian Intelligence

3 April 2010

General Omar Qinawi

Sir,

Allow me to begin by expressing our utmost gratitude and appreciation to you for graciously agreeing to meet in your office in Cairo on 27 February 2010 the Chairman and members of the Palestinian Independent Investigation Commission established pursuant to the Goldstone report. We noted your solidarity, your genuine interest in the Palestinian cause and situation, and your evident readiness to provide whatever support you can to assist the Commission in the successful completion of its tasks.

The Commission apprised you of its options for carrying out the portion of its work related to the Gaza Strip if the de facto authority in Gaza persisted in its refusal to allow the Commission to pursue its mandate to investigate violations attributed to the authority. Those options were as follows:

1. To appoint an independent working group composed of experts of proven integrity, professionalism and impartiality to carry out the Commission's tasks in the Gaza Strip. In order to strengthen the group's professional credentials, we proposed that it should be headed by Mr. Cherif Bassiouni, an individual who is trusted and recognized by regional and international parties for his professionalism and long experience in that kind of work.

2. To delegate the task of investigating alleged Palestinian actions in the Gaza Strip to Palestinian civil society institutions that monitor and document such violations.

3. In the event that the two preceding options were rejected, the Commission proposed that meetings with institutions operating in the Gaza Strip should be held in the Arab Republic of Egypt, in order to hear testimony on human rights violations attributed to Palestinians in Gaza, and meet some of the victims of those violations.

You expressed the readiness to communicate on the Commission's behalf with relevant parties in the Gaza Strip. We should like you to inform us what has been accomplished in that regard.

We reiterate our gratitude and appreciation for your efforts, and hope to continue our cooperation and coordination in carrying out the Commission's tasks.

(*Signed*) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

Annex 7

Letter to Mr. Ahmed ben Helli, Deputy Secretary-General of the League of Arab States

3 April 2010

Mr. Ahmed ben Helli

Deputy Secretary-General of the League of Arab States

Sir,

Allow me to begin by expressing our utmost gratitude and appreciation to you for graciously agreeing on 25 February 2010 to meet the Chairman and members of the Palestinian Independent Investigation Commission established pursuant to the Goldstone report. We noted your solidarity, your genuine interest in the Palestinian cause and situation, and the evident readiness of both yourself and Dr. Amre Moussa, Secretary-General of the League of Arab States, to overcome potential obstacles to progress in condemning the violations and crimes committed by the occupier against the Palestinian people.

The Commission apprised you of its options for carrying out the portion of its work related to the Gaza Strip if the de facto authority in Gaza persisted in its refusal to allow the Commission to pursue its mandate to investigate violations attributed to the authority. Those options were as follows:

1. To appoint an independent working group composed of experts of proven integrity, professionalism and impartiality to carry out the Commission's tasks in the Gaza Strip. In order to strengthen the group's professional credentials, we proposed that it should be headed by Mr. Cherif Bassiouni, an individual who is trusted and recognized by regional and international parties for his professionalism and long experience in that kind of work.

2. To delegate the task of investigating alleged Palestinian actions in the Gaza Strip to Palestinian civil society institutions that monitor and document such violations.

3. In the event that the two preceding options were rejected, the Commission proposed that meetings with institutions operating in the Gaza Strip should be held in the Arab Republic of Egypt, in order to hear testimony on human rights violations attributed to Palestinians in Gaza, and meet some of the victims of those violations.

You expressed the willingness of both the Secretary-General of the League of Arab States and yourself to intervene in order to enable the Commission to carry out its work in the Gaza Strip, and we hope that you have succeeded in that endeavour.

We should like you to inform us what has been accomplished in that regard. We reiterate our gratitude and appreciation for your efforts, and hope to continue our cooperation and coordination in pursuit of our common goals.

(*Signed*) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

Annex 8

Copy of the notice placed in newspapers by the Commission in April

Notice

The Independent Investigation Commission established pursuant to the Goldstone report by decree of the President of the Palestinian Authority in response to General Assembly resolution 64/10, announces that it is initiating an investigation into violations of human rights and freedoms that are alleged to have been committed in the West Bank and Gaza Strip between 28 December 2008 and 31 March 2009.

The Commission's mandate covers the following violations alleged to have been committed by the Palestinian authorities in the West Bank:

- Arbitrary arrest and torture
- Violation of the freedom to form associations, targeting of non-governmental organizations in order to prevent them from carrying out their activities, and failure to comply with court decisions regarding those associations
- Violation of freedom of the press
- Violation of freedom of assembly
- Discrimination on the basis of political affiliation in the hiring and firing of employees in the public service sector.

The following violations alleged by the report to have been committed in the Gaza Strip will also be investigated:

- Killings
- Arbitrary arrest
- Torture and ill-treatment.

Any person who has been a victim of any of the above violations should file a complaint, either in person or through a relative or agent, with the Independent Investigation Commission established pursuant to the Goldstone report. The relevant forms can be filled out in person at Commission headquarters, or the complaint may be sent to Commission staff via fax, telephone or e-mail.

The Commission guarantees confidentiality, privacy, protection and immunity for all complainants and informants

Complaints may be submitted to Commission headquarters from any governorate in the West Bank or the Gaza Strip until 20 April 2010. Commission working hours are from Sunday to Thursday, from 9.00 a.m. to 4.00 p.m.

Address of the Commission: Ground Floor, Abraj al-Wataniyyah Building
Al-Quds Municipality Road
El-Bireh City

Telephone No.: 022410731, 022410833
Fax No.: 022410732
E-mail: ipalestinecgi@gmail.com

اللجنة الفلسطينية المستقلة

للتحقيق وفقاً لتقرير غولدستون

اعـــــلان

تعلن اللجنة الفلسطينية المستقلة للتحقيق وفقاً لتقرير غولدستون، والمشكلة بقرار من رئيس السلطة الوطنية الفلسطينية، اعمالاً لقرار الجمعية العامة للأمم المتحدة رقم عن شروعها في التحقيق في انتهاكات حقوق الانسان وحرباته المدعى بارتكابها في الضفة الغربية، وقطاع غزة، خلال الفترة الممتدة من ٢٠٠٨/١٢/٢٨م ولغاية ٢٠٠٩/٢/٣١م، حيث ستمارس اللجنة ولايتها في التحقيق بالانتهاكات المدعى بارتكابها طبقاً للتقرير في الضفة الغربية بالجوانب التالية:

- الاعتقال التعسفي والتعذيب.
- انتهاك حرية تكوين الجمعيات، واستهداف وعدم تمكين التنظيمات الأهلية من ممارسة عملها، وعدم تنفيذ قرارات المحاكم المتعلقة بهذه الجمعيات.
- انتهاك الحريات الصحفية.
- انتهاك حرية التجمع السلمي.
- التمييز على اساس الانتماء السياسي في التعيين وفصل الموظفين العاملين على خلفية الانتماء السياسي.

كما ستحقق اللجنة في الانتهاكات المدعى بارتكابها وفقاً للتقرير في قطاع غزة والمتمثلة بالأمور التالية:

- القتل.
- الاعتقال التعسفي.
- التعذيب وسوء المعاملة.

على كل شخص تضرر من الانتهاكات السالفة ان يتقدم بشكوى شخصية او بواسطة قريب او وكيل، الى اللجنة الفلسطينية المستقلة للتحقيق وفقاً لتقرير غولدستون، سواء بالتوجه المباشر الى مقر اللجنة، لتعبئة النماذج الخاصة بذلك، او عبر ارسال الشكوى بالفاكس او الاتصال الهاتفي مع طاقم اللجنة او عبر البريد الالكتروني.

تقدم الشكاوى في مقر اللجنة، من كافة محافظات الوطن في الضفة الغربية وقطاع غزة، لغاية ٢٠١٠/٤/٢٠م.

عنوان اللجنة: مدينة البيرة، شارع القدس (البلدية)، بناية أبراج الوطنية، الطابق الأرضي، هاتف رقم ٠٢٢٤١٠٧٣١ أو ٠٢٢٤١٠٨٣٣ فا كس رقم ٠٢٢٤١٠٧٣٢

البريد الالكتروني:

Copy of the notice placed in newspapers by the Commission in April 2010

Annex 9

Press conference held by the Commission and press release

Wattan Media Centre

At a press conference at the Wattan Media Centre, the Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents an overview of its plan of work

The Palestinian Independent Investigation Commission held a press conference at the Wattan Media Centre, attended by Commission Chairman Issa Abu Sharar and Commission members Mr. Ghassan Farmand and Mr. Yasser al-Amuri, to inform the Palestinian public of progress achieved since its establishment by presidential decree on 25 January 2010.

Judge Issa Abu Sharar, Chairman of the Palestinian Independent Investigation Commission established pursuant to the Goldstone report, underlined the Commission's independence, professionalism and impartiality as an investigative fact-finding Commission, and stressed that the Commission would not countenance any attempt to interfere with or influence its work. He noted that the Commission was authorized to receive complaints and hear testimony from the victim of any violations that fell within its mandate. The Commission also had the authority to interview any Palestinian official implicated in such violations.

Abu Sharar added that investigations would focus on violations committed by Palestinians in the West Bank and the Gaza Strip, including killings, arbitrary arrest, torture, violation of the freedom to form associations and to assemble peacefully, and discrimination on the basis of political affiliation in the hiring and firing of dozens of Government employees.

Abu Sharar also drew attention to attempts made by the Commission since its establishment to gain access to the Gaza Strip in order to report on the Palestinian situation in its entirety, as requested by the United Nations. In that regard, he affirmed that the Commission's mandate covered all Palestinian territory and that as an independent entity, the Commission was unaffected by the current political polarization. He stressed that the Commission's failure would have negative consequences for Palestinians and might even result in the establishment of an international commission.

Abu Sharar invited anyone who had been a victim of any violation in the West Bank or the Gaza Strip to file a complaint with the Commission. He stressed that all files would be handled confidentially, and that the Commission would protect informants and victims. The Commission Chairman commended the cooperation shown by human rights institutions in the West Bank and the Gaza Strip that had submitted data and reports on the human rights situation during the period that fell within the scope of the Commission's mandate.

Abu Sharar closed his remarks by reiterating that the Commission's work would be conducted with impartiality and objectivity, and would rely for legal guidance on international human rights law, international humanitarian law, the Palestinian Basic Law, and other legislation in force in Palestine.

Wattan Media Centre — Al-Maahad Street, Ramallah, Palestine — P. O. Box 859 Ramallah — Tel. No.: 02 2980053/02 2987412 — Fax No.: 02 2959253 — E-mail: wattanmediacenter@wattan.tv

Wattan Media Centre

Palestinian Independent Investigation Commission established pursuant to the Goldstone report informs civil society organizations that it is ready to begin collecting complaints

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report, in accordance with a recommendation adopted at its thirteenth meeting, held at its headquarters in Ramallah on Monday, 12 April 2010, sent letters to non-governmental human rights organizations asking them to publish on the home pages of their websites the Commission's notice that it was ready to receive complaints.

Wattan Media Centre — Al-Maahad Street, Ramallah, Palestine — P. O. Box 859 Ramallah — Tel. 02 2980053/02 2987412 — Fax 02 2959253 — E-mail: wattanmediacenter@wattan.tv

7 April 2010

Press Release

On 25 January 2010, His Excellency the Palestinian President Mahmoud Abbas issued a decree establishing an independent investigation commission pursuant to the report of the United Nations Fact-Finding Mission on the Gaza Conflict. The decree was in response to General Assembly resolution 64/10, which urged parties to set up national commissions to investigate the violations they are alleged by that report to have committed.

In response to that request, the Palestinian President established the Palestinian Independent Investigation Commission, comprising the following members:

Judge Issa Abu Sharar (Chairman);
Judge Zuhair al-Surani (member);
Mr. Ghassan Farmand (member);
Mr. Yasser al-Amuri (member);
Mr. Nasser al-Rayyes (member).

The Commission defined its tasks and mandate with reference to the Goldstone report as being to investigate violations alleged by that report to have been committed in the West Bank and the Gaza Strip. Those violations include the following:

- Arbitrary arrest and torture
- Violation of the freedom to form associations, targeting of non-governmental organizations in order to prevent them from carrying out their activities, and failure to comply with court decisions regarding such organizations
- Violation of freedom of the press
- Violation of freedom of assembly
- Discrimination in hiring and firing of employees in the public service sector on the basis of political affiliation.

The Commission will also investigate the following violations which are alleged to have been committed by the Palestinian authorities in the Gaza Strip:

- Killings
- Arbitrary arrest
- Torture and ill-treatment.

In addition, the Commission will investigate violations of international humanitarian law that are alleged by the report to have been committed by Palestinians in the Gaza Strip during the Israeli aggression there.

As soon as it had been established, the Commission met with a view to discussing the nature of its mandate and competence and means of carrying out its tasks. In order to safeguard its objectivity, independence and impartiality, the Commission deemed it necessary to begin by drafting a Statute based on international norms and principles and, in particular, the United Nations model protocol for national commissions of inquiry.

With a view to ensuring transparency, credibility and impartiality, Mr. Nasser al-Rayyes recused himself from the Commission because his membership conflicted with the provisions of the United Nations model protocol for national commissions of inquiry, notably the provision that

commission members should not be closely associated with any individual, government entity, political party or other organization potentially implicated in the alleged violations, or an organization or group associated with the victim. Mr. al-Rayyes had served as a legal advisor to Al-Haq, a Palestinian human rights institution that not only monitors and documents violations and infringements of human rights and freedoms, but had also been involved in the defence of a number of individuals and institutions whose rights and freedoms had been violated. Al-Haq was one of the institutions that had met the Fact-Finding Mission headed by Judge Goldstone, which had interviewed its legal advisor on the human rights situation in the Occupied Palestinian Territory. His resignation was accepted and the Commission decided to proceed with the remaining members.

After drafting its Statute and establishing its legal authority on the basis of the provisions and principles of international human rights law, international humanitarian law, the Palestinian Basic Law, and the relevant legislation in force in Palestine, the Commission decided to consider international precedents from analogous situations. It travelled to Cairo to meet Mr. Cherif Bassiouni, a renowned international legal expert who headed investigative commissions in the former Yugoslavia. The Commission discussed with him the specifics of its legal authority and ways of carrying out its mandate, particularly in the Gaza Strip.

While in Cairo, the Commission also met Mr. Ahmed ben Helli, Deputy Secretary-General of the League of Arab States, in order to discuss ways of enabling the Commission to carry out its work in the Gaza Strip. The following possibilities were open to the Commission in that regard:

1. The Commission would be permitted to operate in the Gaza Strip, given that its Statute made clear that it would conduct its work with the utmost professionalism and without being affected in any way by political considerations.

2. If that first option, which we considered to be the most professional and acceptable, was denied, the Commission would try to appoint an independent working group composed of experts of demonstrated integrity, professionalism and impartiality to carry out the Commission's tasks in the Gaza Strip. We proposed that such a group be headed by Mr. Cherif Bassiouni, an individual trusted and recognized by regional and international parties because of his professionalism and long experience in that kind of work.

3. The third option was for the Commission to delegate the task of investigating actions alleged to have been committed by Palestinians in the Gaza Strip to Palestinian civil society institutions that monitor and document violations.

4. In the event that all the preceding options were rejected, the Commission proposed to meet the relevant institutions in Egypt in order to hear testimony on human rights violations attributed to the Palestinians in Gaza, and meet Palestinian victims of human rights violations.

In view of the fact that the Commission received no response to its proposals, it has decided to conduct its tasks in accordance with the following timetable:

(a) On 4 April 2010, the Commission placed notices in local newspapers that ran for two consecutive days, explaining the nature of its tasks

and the violations falling within the scope of its investigation in the West Bank and the Gaza Strip. The notices invite anyone who has been a victim of violations falling within the scope of the Commission's mandate in the West Bank or the Gaza Strip to file a complaint either in person or, if that was impossible, through a relative or agent. Given the obstacles to travel, the Commission decided to facilitate the process by offering victims the option of submitting their complaint via fax or e-mail.

(b) The Commission has begun to gather and document reports, statements and letters from human rights institutions regarding violations falling within the scope of its mandate, and urges any Palestinian institutions that have documented such violations to contact the Commission and provide it with the relevant documents.

- The deadline for submission of complaints is 20 April 2010, after which the Commission will begin to study and analyse them.
- The Commission will hold meetings with Palestinian human rights associations and local media institutions in order to discuss documented testimony and reports of violations alleged to have been committed by the Authority, and interview them about matters under investigation. Hearings will be held for the victims themselves to testify about their experiences.
- After those hearings, the Commission will meet the Palestinian authorities in order to discuss violations alleged to have been committed by them and interview them on the matters under investigation.
- At the designated time, the Commission will prepare a draft report summarizing its investigation of violations alleged to have been committed by the Palestinian side and making appropriate recommendations.
- The Commission will then submit its final report to the competent parties.

Timetable for Commission activities in the Gaza Strip

- Given the difficulty of access by the Commission to the Gaza Strip and the political obstacles to fulfilment of the Commission's mandate there, it has been decided after consultations among Commission members to defer drafting an action plan and timetable for the investigation of violations alleged to have been committed by the authorities in the Gaza Strip until the League of Arab States responds to our request.

Annex 10

Invitation to the Change and Reform Bloc to meet the Commission

13 April 2010

Members of the Change and Reform Bloc

Re: Arranging a meeting with the Change and Reform Bloc

Sirs,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and, pursuant to a recommendation adopted at the Commission's thirteenth meeting that coordination of its work should be facilitated by holding a meeting with the Change and Reform Bloc of the Legislative Council, would be grateful if you could make arrangements for such a meeting to take place on Thursday, 15 April 2010 at 10.00 a.m. at Commission headquarters.

Accept, Sirs, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

Annex 11

Request to the Secretary-General of the Legislative Council to arrange a meeting with representatives of the parliamentary blocs and lists, and with the coordinators of the parliamentary groups

13 April 2010

Mr. Ibrahim Khreisheh

Secretary-General of the Palestinian Legislative Council

Re: Arranging a meeting with the heads of the parliamentary blocs in the Legislative Council

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and, pursuant to a recommendation adopted at the Commission's thirteenth meeting to facilitate coordination of its work by holding a meeting with the representatives of the parliamentary blocs and lists, and with the coordinators of the parliamentary groups, would be grateful if you could make arrangements for such a meeting to take place on Sunday, 18 April 2010 at 12.00 noon at Commission headquarters.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

Annex 12

Letters to the following rights organizations requesting them to post the Commission's notice on their websites:

- Gaza Mental Health Centre
- Committee for the Defence of Rights and Freedoms
- Independent Commission for Human Rights
- Red Cross, Gaza
- Al-Mezan Centre for Human Rights
- United Nations, Gaza
- Palestinian Centre for Human Rights
- Al-Dameer Association for Human Rights

13 April 2010

Mr. Eyad el-Sarraj
Gaza Mental Health Centre

Re: Publication of notice

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at the headquarters of your organization and post it on the home page of your organization's website.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

12 April 2010

Mr. Adel Abu Jahal
Chairman of the Committee for the Defence of Rights and Freedoms
Palestinian Bar Association

Re: Distribution of notice

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at Palestinian Bar Association headquarters and distribute it to the greatest possible number of lawyers and others, with the proviso that the text of the notice must be adhered to.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

13 April 2010

Ms. Randa Siniora
Independent Commission for Human Rights

Re: Publication of notice

Madam,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at the headquarters of your organization and post it on the home page of your organization's website.

Accept, Madam, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

13 April 2010

Red Cross Headquarters

Re: Publication of notice

Sirs,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at the headquarters of your organization and post it on the home page of your organization's website.

Accept, Sirs, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

13 April 2010

Mr. Issam Younis
Al-Mezan Centre

Re: Publication of notice

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at the headquarters of your organization and post it on the home page of your organization's website.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

13 April 2010

Mr. Jamal Hamad, Spokesman
United Nations Headquarters
Gaza

Re: Publication of notice

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at the headquarters of your organization and post it on the home page of your organization's website.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

13 April 2010

Mr. Iyad Alami
Palestinian Centre for Human Rights

Re: Publication of notice

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at the headquarters of your organization and post it on the home page of your organization's website.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

13 April 2010

Mr. Khalil Abu Shammala
Al-Dameer Association for Human Rights

Re: Publication of notice

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at the headquarters of your organization and post it on the home page of your organization's website.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Annex 13

Covering letter from the Minister of the Interior of the Palestinian National Authority enclosing a report on claims regarding the Ministry of the Interior

Palestinian Liberation Organization
Palestinian National Authority
Minister of the Interior

15 April 2010

Judge Issa Abu Sharar
Chairman
Palestinian Independent Investigation Commission established pursuant to the Goldstone report

Sir,

Pursuant to the instructions of President Abu Mazen, please find attached the report of the Ministry of Interior concerning the claims regarding the Palestinian National Authority Ministry of the Interior set forth in the Goldstone report.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Said **Abu Ali**
Minister of the Interior

[*Added by hand*:]

On the basis of the Commission decision, we adopt the letter and attached report as a Commission document.

[*signature illegible*]

20 April 2010

Annex 14

Request to the Samir Kassir Foundation to provide the Commission with its documentation on violations of press freedom

Ref: ICGR/5/57/2010

18 April 2010

Ms. Giselle Khoury
Chairperson of the Board of Directors
Samir Kassir Foundation

Madam,

On 25 January 2010, in implementation of General Assembly resolution 64/10, His Excellency the Palestinian President, Mahmoud Abbas, issued a decree establishing the Palestinian Independent Investigation Commission established pursuant to the Goldstone report, with the goal of investigating violations of human rights and freedoms, including violations of press freedoms, that are alleged by the Goldstone report to have been committed in the West Bank and Gaza Strip.

In view of our interest in investigating violations of press freedoms in the Palestinian territories by the Palestinian authorities in the West Bank and Gaza Strip, we would be grateful if you would kindly provide us with all reports and statements your Foundation has documented and issued on the status of press freedoms in the Palestinian territories between 1 January 2009 and the present date. Please note that, in the interests of transparency, professionalism and impartiality, the Commission report will credit your Foundation as the source of all the quotations or data taken from such reports and statements.

In conclusion, we express our deep appreciation for your pioneering role and effort in defence of freedom of the press and dissemination of the culture of democracy in the Arab world. We hope that we will continue to cooperate and coordinate in enabling the Commission to fulfil its duties.

Accept, Madam, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Annex 15

Letter to the Independent Commission for Human Rights concerning coordination of hearings with victims of and witnesses to violations involving murder/arrest and torture in the Gaza Strip to be conducted by videoconference at the offices of the Independent Commission for Human Rights in Ramallah and Gaza

28 April 2010

Ms. Randa Siniora
Executive Director
Independent Commission for Human Rights

Re: The holding of simultaneous hearings in the West Bank and Gaza Strip

Madam,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments and would like to inform you that it will hold hearings with a select group of victims of human rights violations in the Gaza Strip during the first week of May 2010.

Given the impartiality and credibility of the Independent Commission for Human Rights and its commitment to the standards of protection for those who report violations and to other international safeguards, and in view of the impossibility of travelling to the Gaza Strip, the Commission would like to hold those sessions simultaneously, via videoconference, at the offices of the Independent Commission for Human Rights in the Gaza Strip and in Ramallah in the West Bank, in order to make it possible for the members of the Commission to hear the victims of violations.

We would appreciate a prompt response, in order to enable the administrative team to arrange a timetable for the hearings that does not conflict with your working hours and commitments.

In conclusion, we express our deep appreciation for your pioneering role and effort in defence of human rights and freedoms. We hope that we will continue to cooperate and coordinate in enabling the Commission to fulfil its duties.

Accept, Madam, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Annex 16

Letter to the Chairman of the General Personnel Council, requesting a copy of the security directives issued by the Council of Ministers, and the response

Ref: ICGR/12/76/2010

2 May 2010

Mr. Hussein al-Araj
Chairman, General Personnel Council

Re: Providing the Commission with a copy of the resolution concerning the security check

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments and would like to request you to provide it with a copy of the directives issued to the General Personnel Council by the Secretary-General of the Council of Ministers, pursuant to which a security check is considered to be an essential condition for appointment to a public position, in accordance with resolution 18, adopted on 9 September 2007 by the Council of Ministers.

Thank you for your cooperation.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Palestinian National Authority
General Personnel Council

Date: 6 May 2010

Judge Issa Abu Sharar
Chairman, Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Re: Providing the Commission with a copy of the resolution concerning the security check

Sir,

The General Personnel Council presents its compliments, and refers to your letter of 2 May 2010, in which you requested a copy of the directives issued to the General Personnel Council by the Secretary-General of the Council of Ministers, pursuant to a security check is considered to be an essential condition for appointment to a public position, we attach a copy of the letter dated 9 September 2007 which we received from the Secretary-General of the Council of Ministers concerning the above matter.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Hussein **al-Araj**
Chairman, General Personnel Council

Palestinian National Authority
Council of Ministers
Secretariat of the Council of Ministers

Ref: 2007/CSCM/2115

Date: 9 September 2009

Mr. Jihad Hamdan
Chairman, General Personnel Council

Re: Conduct of security check

Sir,

The Secretariat of the Council of Ministers presents its compliments and advises you of the resolution of the Council of Ministers adopted at weekly session No. 18, held on 3 September 2007, pursuant to which a security check is to be conducted as part of the appointment process. The General Personnel Council is responsible for the appointment process and must therefore liaise with the security services in this regard.

Kindly take the measures necessary to implement the resolution.

Thank you for your cooperation.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Saadi **al-Krunz**
Secretary-General of the Council of Ministers
Head of the Prime Minister's Office

Annex 17

Letter to the Secretary-General of the Council of Ministers, requesting that the Commission should be provided with security resolutions relating to public sector employees, and the response

Ref: ICGR/2/75/2010

2 May 2010

Mr. Naim Abu Hommos
Secretary-General of the Palestinian Council of Ministers

Re: Request for copies of Council of Ministers resolutions that are pertinent to the Commission's work

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments and would like to request Your Excellency to provide it with a copy of resolution 18, adopted by the Council of Ministers at its session on 9 September 2007, pursuant to which a security check is considered to be an essential condition for appointment to a public position. We would also like to request you to provide the Commission with a copy of the directives issued by the Secretary-General of the Council of Ministers pursuant to that resolution.

Thank you for your cooperation and interest in enabling the Commission to fulfil its task.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Palestinian National Authority
Council of Ministers
Secretariat of the Council of Ministers

Ref: CSCM/2010/1000

Date: 11 May 2010

Mr. Issa Abu Sharar
Chairman, Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Re: Security

Sir,

The Secretariat of the Council of Ministers presents its compliments and, with reference to your letter of 2 May 2010 requesting a copy of the Council of Ministers resolution concerning security, we would like to explain to you that, in the course of its deliberations during session 18 on 9 September 2007, the Council of Ministers discussed security measures as one of the conditions for the appointment of staff, in accordance with the Civil Service Law. The Council considered that this measure is normal, and is applied in many countries of the world, given the sensitivity of work in Government establishments and the Government's desire to maintain the security and safety of Government establishments and departments, thereby enabling it to provide the population with optimum service.

Thank you for your understanding and cooperation.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Naim **Abu Hommos**
Secretary-General of the Council of Ministers

Palestinian National Authority
Council of Ministers
Secretariat of the Council of Ministers

Ref: 2007/CSCM/2115

Date: 9 September 2009

Mr. Jihad Hamdan
Chairman, General Personnel Council

Re: Conduct of security check

Sir,

The Secretariat of the Council of Ministers presents its compliments and advises you of the resolution of the Council of Ministers adopted at weekly session No. 18, held on 3 September 2007, pursuant to which a security check is to be conducted as part of the appointment process. The General Personnel Council is responsible for the appointment process and must therefore liaise with the security services in this regard.

Kindly take the measures necessary to implement the resolution.

Thank you for your cooperation.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Saadi **al-Krunz**
Secretary-General of the Council of Ministers
Head of the Prime Minister's Office

Annex 18

Invitation to community organizations in the West Bank to attend hearings at the headquarters of the Commission:

- Palestinian Network of Non-Governmental Organizations
- Independent Commission for Human Rights
- Al-Haq
- Democracy and Workers' Rights Centre
- Jerusalem Legal Aid Centre
- Al-Dameer Association
- Treatment and Rehabilitation Centre for Victims of Torture

17 May 2010

Coordinating Committee of the Palestinian Network of Non-Governmental Organizations

Subject: Arrangements for a hearing with your organization concerning violations of human rights

Ladies and Gentlemen,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. Having concluded its hearings with complainants who alleged that rights and freedoms within the Commission mandate had been violated, the Commission feels it necessary to complete its investigation by holding hearings with civil society organizations, in order to take their statements on the violations allegedly committed by the Palestinian National Authority in the West Bank.

In view of the attention paid by your organization to monitoring, documenting and following up cases of arrest, torture, dismissal from employment, peaceful assembly and associations, the Commission wishes to invite you to come to its headquarters at 10 a.m. on Thursday, 20 May 2010, or to mandate whomsoever you may consider appropriate, with a view to hearing your organization's views. We also hope that you will provide us with copies of any relevant official correspondence and any replies from the parties concerned.

Accept, Ladies and Gentlemen, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

17 May 2010

Ms. Randa Siniora

Director-General of the Independent Commission for Human Rights

Subject: Arrangements for a hearing with the Independent Commission for Human Rights concerning violations of human rights

Madam,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. Having concluded its hearings with complainants who alleged that rights and freedoms within the Commission mandate had been violated, the Commission feels it necessary to complete its investigation by holding hearings with civil society organizations, in order to take their statements on the violations allegedly committed by the Palestinian National Authority in the West Bank.

In view of the attention paid by the Independent Commission for Human Rights to monitoring, documenting and following up cases of arrest, torture, dismissal from employment, peaceful assembly and associations, the Commission wishes to invite you to come to its headquarters at 10.30 a.m. on Thursday, 20 May 2010, or to mandate whomsoever you may consider appropriate, with a view to hearing your organization's views. We also hope that you will provide us with copies of any relevant official correspondence and any replies from the parties concerned.

Accept, Madam, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

17 May 2010

Mr. Sha'wan Jabarin

Director-General of Al-Haq

Subject: Arrangements for a hearing with Al-Haq concerning violations of human rights

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. Having concluded its hearings with complainants who alleged that rights and freedoms within the Commission mandate had been violated, the Commission feels it necessary to complete its investigation by holding hearings with civil society organizations, in order to take their statements on the violations allegedly committed by the Palestinian National Authority in the West Bank.

In view of the attention paid by your organization to monitoring, documenting and following up cases of arrest, torture, dismissal from employment, peaceful assembly and associations, the Commission wishes to invite you to come to its headquarters at 11.30 a.m. on Thursday, 20 May 2010, or to mandate whomsoever you may consider appropriate, with a view to hearing your organization's views. We also hope that you will provide us with copies of any relevant official correspondence and any replies from the parties concerned.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

17 May 2010

Mr. Hassan Barghouti

Director-General of the Democracy and Workers' Rights Centre

Subject: Arrangements for a hearing with the Democracy and Workers' Rights concerning violations of human rights

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. Having concluded its hearings with complainants who alleged that rights and freedoms within the Commission mandate had been violated, the Commission feels it necessary to complete its investigation by holding hearings with civil society organizations, in order to take their statements on the violations allegedly committed by the Palestinian National Authority in the West Bank.

In view of the attention paid by your organization to monitoring, documenting and following up cases of arrest, torture, dismissal from employment, peaceful assembly and associations, the Commission wishes to invite you to come to its headquarters at 11 a.m. on Thursday, 20 May 2010, or to mandate whomsoever you may consider appropriate, with a view to hearing your organization's views. We also hope that you will provide us with copies of any relevant official correspondence and any replies from the parties concerned.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

17 May 2010

Mr. Issam Aruri

Director-General of the Jerusalem Legal Aid Centre

Subject: Arrangements for a hearing with your organization concerning violations of human rights

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. Having concluded its hearings with complainants who alleged that rights and freedoms within the Commission mandate had been violated, the Commission feels it necessary to complete its investigation by holding hearings with civil society organizations, in order to take their statements on the violations allegedly committed by the Palestinian National Authority in the West Bank.

In view of the attention paid by your organization to monitoring, documenting and following up cases of arrest, torture, dismissal from employment, peaceful assembly and associations, the Commission wishes to invite you to come to its headquarters at 1 p.m. on Thursday, 20 May 2010, or to mandate whomsoever you may consider appropriate, with a view to hearing your organization's views. We also hope that you will provide us with copies of any relevant official correspondence and any replies from the parties concerned.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

17 May 2010

Ms. Sahar Francis

Director-General of Al-Dameer Association

Subject: Arrangements for a hearing with your organization concerning violations of human rights

Madam,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. Having concluded its hearings with complainants who alleged that rights and freedoms within the Commission mandate had been violated, the Commission feels it necessary to complete its investigation by holding hearings with civil society organizations, in order to take their statements on the violations allegedly committed by the Palestinian National Authority in the West Bank.

In view of the attention paid by your organization to monitoring, documenting and following up cases of arrest, torture, dismissal from employment, peaceful assembly and associations, the Commission wishes to invite you to come to its headquarters at 12 noon on Thursday, 20 May 2010, or to mandate whomsoever you may consider appropriate, with a view to hearing your organization's views. We also hope that you will provide us with copies of any relevant official correspondence and any replies from the parties concerned.

Accept, Madam, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

17 May 2010

Mr. Mahmoud Sahwil

Director-General of the Treatment and Rehabilitation Centre for Victims of Torture

Subject: Arrangements for a hearing with your organization concerning violations of human rights

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. Having concluded its hearings with complainants who alleged that rights and freedoms within the Commission mandate had been violated, the Commission feels it necessary to complete its investigation by holding hearings with civil society organizations, in order to take their statements on the violations allegedly committed by the Palestinian National Authority in the West Bank.

In view of the attention paid by your organization to monitoring, documenting and following up cases of arrest, torture, dismissal from employment, peaceful assembly and associations, the Commission wishes to invite you to come to its headquarters at 12.30 p.m. on Thursday, 20 May 2010, or to mandate whomsoever you may consider appropriate, with a view to hearing your organization's views. We also hope that you will provide us with copies of any relevant official correspondence and any replies from the parties concerned.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Annex 19

Letter from the United Nations concerning the date for delivery of the report

Permanent Observer Mission of Palestine to the United Nations

New York, 4 June 2010

Top priority

Sir,

I have the honour to transmit herewith a letter dated 27 May 2010 from the United Nations Secretariat concerning General Assembly resolution 64/254, of 26 February 2010, entitled "Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict". In that letter, the Secretariat requests to be provided by 12 July 2010 with written information regarding steps that the Palestinian side may have taken or be in the process of taking with a view to conducting investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice. That information will enable the Secretary-General of the United Nations to prepare a report on implementation of the above-mentioned resolution, pursuant to paragraph 5 thereof.

Please take the necessary action, in order to permit us to duly relay the requisite information to the United Nations Secretariat by the aforementioned date.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Riyad **Mansour**
Ambassador
Permanent Observer

Please convey a copy to H.E. the Minister for Foreign Affairs

H. E. Mr. Salam Fayyad
Prime Minister

UNITED NATIONS NATIONS UNIES

EXECUTIVE OFFICE OF THE SECRETARY-GENERAL
CABINET DU SECRETAIRE GENERAL

The Secretariat of the United Nations presents its compliments to the Permanent Observer Mission of Palestine to the United Nations and has the honour to refer to General Assembly resolution 64/254 of 26 February 2010, entitled "Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict".

In operative paragraph 2 of that resolution, the General Assembly:

"*Reiterates its call* upon the Government of Israel to conduct investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the United Nations Fact-Finding Mission [on the Gaza Conflict], towards ensuring accountability and justice".

In operative paragraph 3 of that same resolution, the General Assembly:

"*Reiterates its urging* for the conduct by the Palestinian side of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice"

In operative paragraph 4 of its resolution, the General Assembly:

"*Reiterates its recommendation* to the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War,[2] to reconvene as soon as possible a Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with article 1, bearing in mind the convening of such a Conference and the statement adopted on 15 July 1999 as well as the reconvening of the Conference and the declaration adopted on 5 December 2001".

In operative paragraph 5 of its resolution 64/254, the General Assembly:

"*Requests* the Secretary-General to report to the General Assembly, within a period of five months, on the implementation of the present resolution, with a view to the consideration of further action, if necessary, by the relevant United Nations organs and bodies, including the Security Council".

In order to assist the Secretary-General in fulfilling his responsibilities under this last paragraph, the Secretariat hereby requests the Permanent Observer Mission to provide the Secretariat by 12 July 2010 with written information regarding the steps that the Palestinian side may have taken, or be in the process of taking, further to the urging of the General Assembly in operative paragraph 3 of its resolution.

The Secretariat is sending similar *notes verbales* to the Permanent Mission of Israel to the United Nations and the Permanent Mission of Switzerland to the United Nations requesting written information regarding steps taken further to the exhortation and the recommendation of the General Assembly in operative paragraphs 2 and 4, respectively, of its resolution.

The Secretariat of the United Nations avails itself of this opportunity to express to the Permanent Observer Mission of Palestine to the United Nations the assurances of its highest consideration

27 May 2010

Annex 20

Invitation to the Director of Public Relations and Non-Governmental Organization Affairs, Ministry of the Interior, to attend a hearing

Ref: ICGR/18/107/2010

7 June 2010

Ms. Fadwa Shaer
Director of Public Relations and Non-Governmental Organization Affairs
Ministry of the Interior

Re: Attendance at hearing

Madam,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. As you will be aware, on 25 January 2010, in implementation of General Assembly resolution 64/10, the Palestinian President issued a decree establishing an independent commission to follow up the Goldstone report, with the goal of investigating infringements and violations referred to in the report of the Fact-Finding Mission headed by Judge Richard Goldstone.

The Commission, consisting of Judge Issa Abu Sharar, Chairman, and Judge Zuheir Sourani, Mr. Ghassan Farmand and Mr. Yasser Amouri, members, was established in order to investigate violations of human rights and freedoms committed by the Palestinian National Authority in the West Bank and by the de facto authority in the Gaza Strip.

The Commission will exercise its mandate to investigate violations in numerous fields that were committed by Palestinian bodies in the West Bank, including violation of the freedom to form associations, the targeting of non-governmental organisations (NGOs) and obstruction of their work, and the failure to implement court rulings relating to NGOs.

In view of the fact that the Commission received a number of complaints alleging that the Ministry violated the right to establish associations, and given that the Commission has concluded its hearings with complainants and civil society organizations in respect of this matter, we hope that you, in the interests of the success of the Commission's work and accomplishment of its purpose, will report to the Commission's office at 10.30 a.m. on Tuesday, 8 June 2010, in order to enable it to hear your observations on the violations allegedly committed by the Ministry.

Accept, Madam, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

To cancel or arrange another appointment, please contact Ms. Maram Masruji, telephone No.: 0598934224

Annex 21

Invitation to the Minister of the Interior to attend a hearing

Ref: ICGR/18/108/2010

8 June 2010

H.E. Mr. Said Abu Ali
Minister of the Interior

Re: The scheduling of a hearing at Commission offices

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. As you will be aware, on 25 January 2010, in implementation of General Assembly resolution 64/10, the Palestinian President issued a decree establishing an independent commission to follow up the Goldstone report, with the goal of investigating infringements and violations referred to in the report of the Fact-Finding Mission headed by Judge Richard Goldstone.

The Commission, consisting of Judge Issa Abu Sharar, Chairman, and Judge Zuheir Sourani, Mr. Ghassan Farmand and Mr. Yasser Amouri, members, was established in order to investigate violations of human rights and freedoms committed by the Palestinian National Authority in the West Bank and by the de facto authority in the Gaza Strip.

The Commission will exercise its mandate to investigate violations in numerous fields that were committed by Palestinian bodies in the West Bank, including arrest and torture, violation of the freedom to form associations, the targeting of non-governmental organisations (NGOs) and obstruction of their work, failure to implement court rulings relating to NGOs and violation of press freedoms and the right to peaceful assembly.

In view of the fact that the Commission received a number of complaints and heard statements from persons and organizations concerning violation by the security services affiliated to the Ministry of the rights of detainees, some of whom were subjected to torture, and violation by the Ministry's department for NGOs of right to establish associations, we hope that Your Excellency, in the interests of the success of the Commission's work and accomplishment of its purpose, will meet the members of the Commission at the Commission's office at a time to be arranged with Your Excellency, in order to enable it to hear your observations on the violations allegedly committed by the Ministry.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Annex 22

Letter to the Governor of the Palestine Monetary Authority requesting the legal basis for procedures for the opening of bank accounts by associations and the reply thereto

14 June 2010

H.E. Mr. Jihad al-Wazir
Governor, Palestine Monetary Authority

Re: Request to provide the Commission with a copy of the Palestine Monetary Authority resolution that stipulates that the Ministry of the Interior must approve applications from associations to open bank accounts

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. As you will be aware, on 25 January 2010, in implementation of General Assembly resolution 64/10, the Palestinian President issued a decree establishing an independent commission to follow up the Goldstone report, with the goal of investigating infringements and violations referred to in the report of the Fact-Finding Mission headed by Judge Richard Goldstone.

The Commission, consisting of Judge Issa Abu Sharar, Chairman, and Judge Zuheir Sourani, Mr. Ghassan Farmand and Mr. Yasser Amouri, members, was established in order to investigate violations of human rights and freedoms committed by the Palestinian National Authority in the West Bank and by the de facto authority in the Gaza Strip.

The Commission will exercise its mandate to investigate violations in various areas committed by Palestinian bodies in the West Bank, including violations of the freedom to form associations, which became apparent through our hearings with individuals and organisations. When we questioned the Director of Public Relations and Non-Governmental Organization Affairs of the Ministry of the Interior on certain matters relating to the stipulation by the Ministry of the Interior that associations must obtain the approval of the Ministry before they could be authorised to open a bank account, she stated that the measure had been put in place pursuant to a resolution of the Palestinian Monetary Authority, concerning which the Authority had officially notified the Ministry.

Kindly provide us with a copy of that resolution. The Commission also hopes that the Monetary Authority will explain the legal justification for that measure, if there is one.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Palestine Monetary Authority

Date: 22 June 2010

Justice Issa Abu Sharar
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report
Ramallah, Palestine

Re: Procedures for the opening of bank accounts by associations

Sir,

With reference to the above subject and your letter No. ICGR/12/111/2010 of 14 June 2010 requesting a copy of the Palestine Monetary Authority resolution which stipulates that associations must obtain Ministry of the Interior approval before the opening of bank accounts may be authorised, we have the pleasure to provide the following clarification:

1. The procedures for the opening of bank accounts in all sectors are regulated by instruction No. 9/2009 of 24 December 2009, clause 8/1/5 of which regulates the opening of accounts by associations on the basis of the provisions of the Banking Law. The approval of the Ministry of the Interior or Ministry of Labour, as appropriate, is required for accounts to be opened. That requirement is part of the framework for the regulation of the relationship between banks and the banking authorities and is consistent with the Money Laundering Law.

2. It is considered important to obtain Ministry of the Interior or Ministry of Labour approval of association accounts because of the need for the following:

   (a) To ascertain that the association's registration remains valid and has not been cancelled or undergone change, particularly given that a bank account may be opened some time after the association has been registered;

   (b) To ascertain the accuracy of the names of persons authorised by the Ministry of the Interior to sign on behalf of the association at the bank, any changes occurring thereto and the extent of the power to sign.

Accept, Sir, the assurances of our highest consideration.

[*signatures illegible*]
Palestine Monetary Authority

National Anti-Money Laundering Committee
Financial Follow-up Unit
Palestine

No: NALC/121/7/2010

Date: 6 July 2010

Justice Issa Abu Sharar
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report
Ramallah, Palestine

Re: Legal justification

Sir,

The National Anti-Money Laundering Committee presents its compliments, and having studied your letter No. ICGR/12/111/2010 of 14 June 2010, enquiring about the legal justification for the letter of approval for associations to open bank accounts, I have the pleasure to provide the following clarification:

The Basic Law guarantees and safeguards public freedoms, and legal provisions regulate the rights and duties of natural and legal persons, thereby ensuring legal stability and embodying the concept of a legal basis for the regulation of relations in society.

The crime of money laundering is transnational, which has prompted the international community to formulate international standards to eradicate that crime and protect society from its harmful effects. "Know your customer" is a first step towards combating money laundering and fostering transparency in the early stage of a relationship with a customer, be it a natural or a legal person. The Money Laundering Law, article 5, paragraph 1, grants the competent authorities the power to investigate the extent to which registered legal persons are transparent.

On the basis of the foregoing, and in order to promote the creation of a transparent environment, particularly in respect of the banking sector, and pursuant to the principles of jurisprudence and the rule which says, "the particular qualifies the general", article 6 of the Money Laundering Law (Law No. 9 of 2007), obliges financial institutions to identify and verify customers, whether natural or legal persons, by means of documents, data and official records. That requirement is set forth in detail in the annex to instruction No. 1/2009 concerning anti-money laundering issued by the National Anti-Money Laundering Committee. That instruction stipulates the requirements for dealing with natural or legal persons, which include a letter from the competent ministry identifying the authorised account signatories on behalf of an association, in order to ensure that they are vouched for by a trusted official body. That measure is held to be consistent with and based upon the provisions of the Law. Furthermore, under article 13 of the same Law, the supervisory authorities, of which, under the provisions of the law, the Palestine Monetary Authority is one, are granted regulatory powers to issue instructions on the rules for identifying and verifying natural and corporate customers.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Jihad **al-Wazir**
Chairman, National Anti-Money Laundering Committee

Annex III

Note verbale dated 12 July 2010 from the Permanent Mission of Switzerland to the United Nations addressed to the Secretariat

The Permanent Mission of Switzerland to the United Nations presents its compliments to the Secretariat of the United Nations and has the honour to refer to its note of 27 May 2010 requesting the Permanent Mission to report on steps taken by Switzerland in implementation of paragraph 4 of General Assembly resolution 64/254 of 26 February 2010 entitled "Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict".

In compliance with the specified deadline, the Permanent Mission has the honour to transmit herewith its report to the Secretariat.

Appendix

Status of the talks on follow-up to paragraph 4 of General Assembly resolution 64/254

1. On 26 February 2010, the United Nations General Assembly adopted resolution 64/254 entitled "Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict". In paragraph 4 of the resolution, the General Assembly reiterated "its recommendation to the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to reconvene as soon as possible a Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with article 1, bearing in mind the convening of such a Conference and the statement adopted on 15 July 1999 as well as the reconvening of the Conference and the declaration adopted on 5 December 2001".

2. The General Assembly first recommended that Switzerland take such action on 5 November 2009 in resolution 64/10. In accordance with that recommendation, and in its capacity as depositary of the 1949 Geneva Conventions, Switzerland organized a round of consultations in Geneva in December 2009. The outcome of that round is contained in the annex to the Secretary-General's report of 4 February 2010 (A/64/651). The preliminary consultations, in which only a limited number of actors took part, failed to reveal a dominant trend for or against the holding of a Conference of High Contracting Parties, or a view on the contribution to the civilian population affected of a reconvened Conference of High Contracting Parties to the Fourth Geneva Convention; in other words, it was uncertain what results could be expected for what issues. Switzerland had been encouraged to hold its own discussions on topics that could be addressed at such a Conference.

3. In order to implement the recommendations of the General Assembly and follow up the outcome of the round of consultations, Switzerland appointed an Ambassador on special mission with the specific task of managing the process. Switzerland also conducted deliberations on the topics that could be addressed at the Conference, bearing in mind that the Conference must be inclusive, constructive, consensual and conducive to a concrete result.

4. The question of access to Gaza emerged from the deliberations as a possible topic. Working with specialists in the subject, Switzerland devised an access regime and presented it through a series of talks in New York, Washington and Brussels. It transpired from those talks that the question of establishing a regime for access to Gaza should be distinct from that of convening a Conference of High Contracting Parties. The urgent nature of the situation in Gaza required a swift response on the part of the international community. A Conference of High Contracting Parties therefore did not appear to be the appropriate forum to consider the issue. It was also pointed out that the General Assembly's recommendations to Switzerland applied not merely to the Gaza Strip but to the Occupied Palestinian Territory as a whole. With those concerns in mind, Switzerland continued its deliberations and identified two further topics that could be examined at a Conference of High Contracting Parties: the operationalization of common article 1 of the Geneva Conventions, and the legal issues related to situations of prolonged occupation.

5. In order to sound out the opinions of the High Contracting Parties and other interested parties on these topics, assess whether their positions had developed, and inform them of the steps it had taken since February 2010, Switzerland decided to hold another series of talks in Geneva from 25 June to 6 July 2010.

6. On that occasion, Switzerland held talks with the directly interested parties, other interested parties in the region, the permanent members of the Security Council, the outgoing and incoming Presidents of the European Union, the coordinators of the regional groups, and a number of High Contracting Parties from all of the regional groups. The League of Arab States, the Organization of the Islamic Conference, the International Committee of the Red Cross and the Office of the United Nations High Commissioner for Human Rights were all informed.

7. The talks were conducted in an oral and informal manner. At them, Switzerland reiterated its belief that a Conference of High Contracting Parties should be inclusive, constructive and consensual, and should not act as a platform for political accusations. The Conference should be aimed at promoting a significant improvement in the situation of the civilian population, and should contribute to strengthening international humanitarian law. Switzerland expressed those considerations and sought the views and ideas of the High Contracting Parties and other interested parties consulted. The positions adopted at the talks fell into three categories:

(1) A first group was in favour of convening a Conference.

(2) A second group was firmly opposed to convening a Conference.

(3) A third group comprising a significant number of the High Contracting Parties consulted did not have a definitive opinion for or against the holding of a Conference, but expressed reservations concerning the added value of another Conference and feared that it could be used for political purposes.

8. In sum, once again the talks did not reveal a dominant trend for or against the holding of a Conference of High Contracting Parties. Nor did they clarify whether there was a prevalent opinion among the High Contracting Parties and other interested parties with regard to the content and modalities of such a Conference. However, it did become apparent that the third group would not be able to form a view on whether or not a Conference was necessary until it had a clearer idea of the possible agenda, modalities and outcome.

9. In order to conduct more in-depth deliberations on those questions and to engage in dialogue with all concerned actors, Switzerland was encouraged to continue the discussions through an informal working group. Switzerland will take the necessary measures towards that end as soon as possible.